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DIV. OF OIL, GAS & MINING

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January 17, 2012

VIA HAND DELIVERY

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Re: Great Salt Lake Minerals' Position Regarding Western Resource Advocates'
Request for Agency action and Protest filed on December 13, 2011

Dear Mr. Alder and Ms. Dean,

This letter is a follow-up to the meeting held on January 11, 2012 between representatives from the Utah Attorney General's Office, the Division of Oil, Gas & Mining ("DOGM") and Great Salt Lake Minerals ("GSLM"). At the meeting, GSLM explained its position regarding Western Resource Advocates' ("WRA") Request for Agency Action and Protest filed on behalf of the Friends of Great Salt Lake ("Friends"). This letter is a detailed summary of that position.

BACKGROUND

In recent years, GSLM has undertaken several projects to increase production of the minerals it extracts from the Great Salt Lake, including Sulfate of Potash ("SOP"), Magnesium Chloride, and Sodium Chloride ("Salt"). One of its projects, the "pond sealing project," is intended to reduce the leakage of brines and water from the evaporation ponds. This "pond sealing project" involves placing a thin vertical seam of cement/bentonite in the center of the existing perimeter dikes. The project will result in greater retention of minerals in the ponds and conservation of the water necessary to facilitate the process. The cement/bentonite mixture is encased within the dikes, and is an inert material that GSLM's expert engineers have determined will erode at the same rate as the surrounding dikes after GSLM has concluded its mining activities on the Lake.

On November 11, 2011, following discussions with the DOGM staff, GSLM submitted a request to amend its Notice of Intention to Conduct Mining Operations ("NOI") to DOGM pursuant to Utah law. See Utah Code Ann. § 40-8-18. DOGM reviewed the request and issued an approval letter dated December 6, 2011 stating that "the Division determined this change in the mine plan to be insignificant and thus an amendment. The amendment does not affect the reclamation cost estimate." [Letter from Paul Baker to Joe Havasi dated December 6, 2011, attached hereto as Exhibit 1]. The letter authorized the pond sealing project.

On December 13, 2011, 7 days after the Division approved GSLM's requested amendment, WRA, on behalf of Friends, filed both a Request for Agency Action ("RAA"), and a Protest, challenging the Division's approval of the amendment. Friends argued in the RAA and Protest that: (1) the design of the reclamation plan "would result in the destruction of Bear River Bay and Willard Spur Ecosystems," (2) "the reclamation plan does not adequately provide for the removal of the network of GSLM's Dikes," (3) "the reclamation plan does not adequately account for the subsurface impacts of the phase II walls," and (4) "the reclamation plan fails to adequately account for the impacts to water quality." As the following sections will demonstrate, Friends' RAA and Protest are improper collateral attacks on the Division's approval of GSLM's amendment to its NOI.

ARGUMENT

I. Friends' RAA and Protest are Improper Under Utah Law Because There is No Provision Authorizing a Third Party to Collaterally Challenge the Approval of an Amendment to an NOI.

Friends' collateral attack on DOGM's decision to approve GSLM's NOI amendment is improper because Utah Law does not provide an avenue for third party collateral challenges to DOGM's approval of an NOI amendment. The Utah Administrative Procedures Act ("UAPA"), applicable to all agencies of the state, including DOGM, allows administrative adjudication to be initiated by the timely filing of a request for agency action, but *only* if "the law applicable to the agency *permits persons other than the agency* to initiate adjudicative proceedings." Utah Code Ann. § 63G-4-102; *Id.* § 63G-4-201 [relevant portions attached hereto as Exhibits 2 and 4].

DOGM statutes require that before an operator may begin *initial* mining operations, it must file an NOI with DOGM. Utah Code Ann. § 40-8-13 [attached hereto as Exhibit 6]. Once an initial NOI has been approved by DOGM, and mining operations have commenced, if an operator desires to change any aspect of its mining plan, it must submit a subsequent NOI to modify the approved operations. *Id.* § 40-8-18 [attached hereto as Exhibit 7]. Once the operator has submitted its request to modify its mining operations, DOGM has the authority to classify the request as an amendment or a revision. *Id.* An amendment "will be reviewed and considered for approval or disapproval by the division within 30 days of receipt" of the NOI. *Id.* However, if

the request is not designated an amendment, it "shall be processed and considered for approval by the division in the same manner and within the same time period as an original notice of intention." *Id.*

The process for approval of an original NOI includes a review procedure that allows "any person or agency aggrieved by the tentative decision [to] file a request for agency action with the division." *Id.* § 40-8-13. This means that if an operator's request for a change to mining operations is classified by the agency as a revision, an aggrieved third party may file a request for agency action challenging the approval of the revision. However, the statute does not provide an option for an aggrieved party to file a request for agency action if the request for a change in mining operations is classified as an amendment.

As provided in Utah Code Ann. § 40-8-18, DOGM has promulgated rules that specify when an operator's request for a change in operations shall be classified as an amendment or a revision. The rules define a "revision" as "a change to an approved [NOI], which will increase or decrease the amount of land affected, or alter the location and type of on-site surface facilities, such that the nature of the reclamation plan will differ substantially from that in the approved Notice of Intention." Utah Admin. Code R647-1-106 [attached hereto as Exhibit 11]. The rules define an amendment as "an insignificant change in the approved notice of intention." *Id.*

There are two different procedures outlined in the rules for agency review and approval of revisions and amendments. A revision requires "all information concerning the revision that would have been required in the original notice of intention," and shall "be processed and considered for approval by the Division in the same manner as an original notice of intention." Utah Admin. Code R647-4-118 [attached hereto as Exhibit 8]. This requires public notice and a public comment period, within which "any person or agency aggrieved by the tentative decision may file a written protest with the Division . . . setting forth factual reasons for the complaint." Utah Admin Code R647-4-116 [attached hereto as Exhibit 8]. If such a protest is filed, a hearing is held before the Division in accordance with Utah Code Ann. § 40-8-13. Ultimately, "those portions of the approved notice of intention not subject to revision will not be subject to review." *Id.*

An amendment, by contrast, simply "should be filed on the Notice of Intention to Revise Large Mining Operations [Form]" and "requires Division approval but does not require public notice." Utah Admin Code R647-4-119 [attached hereto as Exhibit 8]. The determination of whether a change to a mining operation is classified as an amendment is made on a "case-by-case basis." *Id.* There is similarly no provision that requires public notice or public comment on the Division's decision to classify a change request as an amendment or a revision. Therefore, the statutes and rules simply do not authorize third party challenges to Division approvals of amendment requests or to the initial Division decision to designate a request as an amendment.

The reasoning behind the distinction between amendments and revisions is sound because an amendment is an insignificant change that does not warrant a hearing while a revision is an action that will have significant impact on the land. Agencies must be able to make insignificant decisions that are not subject to review to allow the agency to avoid never-ending hearings and protests. Where a requested change does not alter the footprint of the mine or increase the cost of reclamation, under Utah law and DOGM rules, the agency is able to approve amendments that are insulated from third party collateral challenge. Such was the case with GSLM's amendment request. It was an insignificant amendment that is not subject to third party challenge.

II. Friends RAA and Protest are Also Improper Because Friends Was Not a Party to the Informal Amendment Request Proceeding.

Friends was not a party to the informal amendment request proceeding and therefore may not participate in the NOI amendment proceeding. DOGM's definition of "party" is "the Board, Division, or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the Board to intervene in the proceeding, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding." Utah Admin. Code R647-1-106 [attached hereto as Exhibit 11]. Similarly, UAPA defines a party as "the agency or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the presiding officer to intervene in the proceeding and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding." Utah Code Ann. § 63G-4-103(f). GSLM was the "person commencing an adjudicative proceeding" by requesting an amendment to its NOI, but Friends does not qualify as a party under either of these definitions.

Friends is also prohibited from obtaining party status through intervention because the amendment request was an informal proceeding. Under UAPA, agencies have authority to designate proceedings as formal or informal and establish separate procedures for each type of proceeding. Utah Code Ann. § 63G-4-202 [attached hereto as Exhibit 3]. DOGM has designated both requests for amendments and requests for revisions as informal proceedings. Utah Admin. Code R647-5-101(2) [attached hereto as Exhibit 10]. UAPA, as well as DOGM rules, prohibit third party intervention into informal proceedings. Utah Code Ann. § 63G-4-203(1)(g) [attached hereto as Exhibit 3]; Utah Admin. Code R647-5-106(9) [attached hereto as Exhibit 10]. As discussed in the previous section, the rules specifically provide for third party challenges to revisions, and therefore an aggrieved party does not need to "intervene" because he or she is already deemed a party under the express provisions in the rules. In contrast, in an amendment request proceeding, because no rules or statutes grant Friends "party" status, and because intervention is prohibited in informal adjudication proceedings, Friends has no avenue to collaterally attack DOGM's approval of GSLM's amendment request.

The Third District Court reached a similar conclusion when Friends attempted to collaterally attack a leasing decision made by the Utah Forestry Fire and State Lands Division

("FFSL") of the Utah Department of Natural Resources ("DNR"). Both FFSL and DOGM operate under the umbrella of DNR. Similar to the DOGM amendment proceeding, an FFSL leasing decision is an informal agency proceeding and there is no provision in the rules or statutes allowing a third party aggrieved by the agency decision to file an RAA. The Court held that "[Friends] did not have authority to participate in the adjudicative proceeding. [Friends] are not 'parties' as defined under the [UAPA]." *Friends of Great Salt Lake v. Utah Dept. of Natural Res. et al*, Case No. 080902785 (Utah 3rd Dist. Ct. September 10, 2010) [attached hereto as Exhibit 14]. Additionally, the Court held that "the Division does not specifically authorize [the RAA]" and "the filing of a [RAA] does not confer on [Friends], the status of party or intervener in the ROD proceedings." *Id.* When Friends attempted to collaterally attack a subsequent leasing decision, Michael Styler, the Executive Director of DNR, confirmed that the Third District Court had "upheld [his] decision dismissing the petition for Consistency Review . . . because [Friends] were not considered 'aggrieved parties.'" [See Letter from Michael Styler to Joro Walker, dated December 2, 2010, attached hereto as Exhibit 13].

As Director of DNR, Michael Styler has "administrative jurisdiction over a division director for the purpose of implementing department policy as established by the division's board." Utah Code Ann. § 79-2-204 [attached hereto as Exhibit 12]. Moreover, the "executive director shall: (a) administer and supervise the department and provide for coordination and cooperation among the boards, division, councils, and committees of the department." *Id.* § 79-2-202. Thus, the policy set by Michael Styler in the FFSL cases, that a third party may not collaterally attack a decision resulting from an informal adjudication, is applicable to all divisions within DNR, including DOGM. Consequently, Friends' collateral attack on DOGM's approval of GSLM's amendment request must be denied.

III. Even if Friends' RAA and Protest Were Proper (Which They are Not) the Arguments Friends Makes Are Beyond the Scope of the Amendment Request.

Even if Friends' RAA or Protest were proper (which they are not), they contain arguments that are beyond the scope of GSLM's Amendment Request and therefore may not be raised. Under DOGM's rules, the "portions of the approved notice of intention not subject to the revision will not be subject to review." Utah Admin. Code R647-4-118(2) [attached hereto as Exhibit 8]. The only change GSLM requested for its NOI was the approval of the pond sealing project. Therefore, the only part of GSLM's NOI potentially subject to review is the pond sealing project.

However, Friends' RAA and Protest include several arguments that reach well beyond the scope of the pond sealing project. Friends' first argument, that "as designed, the reclamation plan would result in the destruction of the Bear River Bay and Willard Spur Ecosystems," is improper because the reclamation plan was not amended by Friends' request. [See Friends' Protest and RAA p. 3-5]. In fact, DOGM's approval letter specifically stated that the pond

Mr. Alder, Assistant Attorney General
Ms. Dean, Associate Director
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sealing project would not affect the cost of reclamation. [See Letter from Paul Baker to Joe Havasi, dated December 6, 2011, attached hereto as Exhibit 1]. Therefore, the reclamation plan is not subject to challenge. Similarly, Friends' second argument that "the reclamation plan does not adequately provide for the removal of the network of GSLM's dikes," is also improper because it addresses components of GSLM's operation, such as the interior dikes, that are not part of the pond sealing project. [See *Id.* at p. 5-6]. Therefore Friends' first two arguments are beyond the scope of the amendment request and may not be raised at any time.

CONCLUSION

For the reasons set forth in this letter, DOGM should deny Friends' RAA and Protest because it is an improper collateral attack on an informal agency proceeding. A hearing on this issue would be beyond DOGM's statutory authority and would force GSLM to expend unnecessary resources. However, if DOGM decides that the RAA and Protest are proper under DOGM's statutes and rules, then the arguments must be limited to those directed only at the pond sealing project, and may not attack other aspects of GSLM's NOI that are beyond the scope of the pond sealing project.

Please feel free to contact Steve Christiansen or Megan Houdeshel with any questions about GSLM's position regarding Friends' RAA and Protest. We look forward to working with you on this matter.

PARR BROWN GEE & LOVELESS



Steven J. Christiansen
Megan J. Houdeshel
Attorneys for Great Salt Lake
Minerals Corporation

cc: Ron Bryan
Joe Havasi
Todd Rohr
Paul Baker



GARY R. HERBERT
Governor

GREGORY S. BELL
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

December 6, 2011

Joseph Havasi
Great Salt Lake Minerals
765 North 10500 West
Ogden, Utah 84404

Subject: Approval of Amended Notice of Intention to Commence Large Mining Operations, Great Salt Lake Minerals, GSL Mine, M/057/0002, Weber County, Utah

Dear Mr. Havasi:

The Division of Oil, Gas and Mining conditionally approves the amendment received November 14, 2011, wherein you propose to add a thin vertical seam of cement bentonite in the perimeter dikes in the Bear River Bay. Based on information provided, the Division determined this change in the mine plan to be insignificant and thus an amendment. The amendment does not affect the reclamation cost estimate.

You may proceed with implementation of the amendment, but prior to final approval, the Division requires that you submit a copy of the revised pages with redline and strikeout removed. The Division will stamp both copies approved and return one for insertion in your copy of the mining and reclamation plan.

The approval or acceptance of a complete notice of intention does not relieve an operator from his responsibility to comply with the applicable statutes, rules, regulations, and ordinances of all local, state and federal agencies with jurisdiction over any aspect of the operator's mining operations.

Thank you for your cooperation.

Sincerely,

Paul B. Baker,
Minerals Program Manager

PBB:lk:eb

cc: Rachel Brown, FFSL rachelbrown@utah.gov
Rochelle Pfeaster, Weber County rpfeaster@co.weber.ut.us
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Section

63G-4-206.

Procedures for formal adjudicative proceedings
— Hearing procedure.

63G-4-207.

Procedures for formal adjudicative proceedings
— Intervention.

63G-4-208.

Procedures for formal adjudicative proceedings
— Orders.

63G-4-209.

Default.

Part 3

Agency Review

63G-4-301.

Agency review — Procedure.

63G-4-302.

Agency review — Reconsideration.

Part 4

Judicial Review

63G-4-401.

Judicial review — Exhaustion of administra-
tive remedies.

63G-4-402.

Judicial review — Informal adjudicative pro-
ceedings.

63G-4-403.

Judicial review — Formal adjudicative pro-
ceedings.

63G-4-404.

Judicial review — Type of relief.

63G-4-405.

Judicial review — Stay and other temporary
remedies pending final disposition.

Part 5

Orders and Enforcement

63G-4-501.

Civil enforcement.

63G-4-502.

Emergency adjudicative proceedings.

63G-4-503.

Declaratory orders.

Part 6

Electronic Records

63G-4-601.

Electronic records and conversion of written
records by governmental agencies.

PART 1

GENERAL PROVISIONS

63G-4-101. Title.

This chapter is known as the "Administrative Procedures
Act."

2008

63G-4-102. Scope and applicability of chapter.

(1) Except as set forth in Subsection (2), and except as
otherwise provided by a statute superseding provisions of this
chapter by explicit reference to this chapter, the provisions of
this chapter apply to every agency of the state and govern:

(a) state agency action that determines the legal rights,
duties, privileges, immunities, or other legal interests of
an identifiable person, including agency action to grant,
deny, revoke, suspend, modify, annul, withdraw, or amend
an authority, right, or license; and

(b) judicial review of the action.

(2) This chapter does not govern:

(a) the procedure for making agency rules, or judicial
review of the procedure or rules;

(b) the issuance of a notice of a deficiency in the
payment of a tax, the decision to waive a penalty or
interest on taxes, the imposition of and penalty or interest
on taxes, or the issuance of a tax assessment, except that
this chapter governs an agency action commenced by a
taxpayer or by another person authorized by law to
contest the validity or correctness of the action;

(c) state agency action relating to extradition, to the
granting of a pardon or parole, a commutation or termi-

nation of a sentence, or to the rescission, termination, or
revocation of parole or probation, to the discipline of,
resolution of a grievance of, supervision of, confinement
of, or the treatment of an inmate or resident of a correc-
tional facility, the Utah State Hospital, the Utah State
Developmental Center, or a person in the custody or
jurisdiction of the Division of Substance Abuse and Men-
tal Health, or a person on probation or parole, or judicial
review of the action;

(d) state agency action to evaluate, discipline, employ,
transfer, reassign, or promote a student or teacher in a
school or educational institution, or judicial review of the
action;

(e) an application for employment and internal person-
nel action within an agency concerning its own employees,
or judicial review of the action;

(f) the issuance of a citation or assessment under Title
34A, Chapter 6, Utah Occupational Safety and Health
Act, and Title 58, Occupations and Professions, except
that this chapter governs an agency action commenced by
the employer, licensee, or other person authorized by law
to contest the validity or correctness of the citation or
assessment;

(g) state agency action relating to management of state
funds, the management and disposal of school and insti-
tutional trust land assets, and contracts for the purchase
or sale of products, real property, supplies, goods, or
services by or for the state, or by or for an agency of the
state, except as provided in those contracts, or judicial
review of the action;

(h) state agency action under Title 7, Chapter 1, Article
3, Powers and Duties of Commissioner of Financial Insti-
tutions, Title 7, Chapter 2, Possession of Depository
Institution by Commissioner, Title 7, Chapter 19, Acqui-
sition of Failing Depository Institutions or Holding Com-
panies, and Title 63G, Chapter 7, Governmental Immu-
nity Act of Utah, or judicial review of the action;

(i) the initial determination of a person's eligibility for
unemployment benefits, the initial determination of a
person's eligibility for benefits under Title 34A, Chapter 2,
Workers' Compensation Act, and Title 34A, Chapter 3,
Utah Occupational Disease Act, or the initial determina-
tion of a person's unemployment tax liability;

(j) state agency action relating to the distribution or
award of a monetary grant to or between governmental
units, or for research, development, or the arts, or judicial
review of the action;

(k) the issuance of a notice of violation or order under
Title 26, Chapter 8a, Utah Emergency Medical Services
System Act, Title 19, Chapter 2, Air Conservation Act,
Title 19, Chapter 3, Radiation Control Act, Title 19,
Chapter 4, Safe Drinking Water Act, Title 19, Chapter 5,
Water Quality Act, Title 19, Chapter 6, Part 1, Solid and
Hazardous Waste Act, Title 19, Chapter 6, Part 4, Under-
ground Storage Tank Act, or Title 19, Chapter 6, Part 7,
Used Oil Management Act, or Title 19, Chapter 6, Part 10,
Mercury Switch Removal Act, except that this chapter
governs an agency action commenced by a person autho-
rized by law to contest the validity or correctness of the
notice or order;

(l) state agency action, to the extent required by federal
statute or regulation, to be conducted according to federal
procedures;

(m) the initial determination of a person's eligibility for
government or public assistance benefits;

(n) state agency action relating to wildlife licenses,
permits, tags, and certificates of registration;

(o) a license for use of state recreational facilities;

(p) state agency action under Title 63G, Chapter 2,
Government Records Access and Management Act, except
as provided in Section 63G-2-603;

(F) if the adjudicative proceeding is to be informal, and a hearing is required by statute or rule, or if a hearing is permitted by rule and may be requested by a party within the time prescribed by rule, state the parties' right to request a hearing and the time within which a hearing may be requested under the agency's rules; and

(G) give the name, title, mailing address, and telephone number of the presiding officer.

(4) When initial agency determinations or actions are not governed by this chapter, but agency and judicial review of those initial determinations or actions are subject to the provisions of this chapter, the request for agency action seeking review must be filed with the agency within the time prescribed by the agency's rules.

(5) For designated classes of adjudicative proceedings, an agency may, by rule, provide for a longer response time than allowed by this section, and may provide for a shorter response time if required or permitted by applicable federal law.

(6) Unless the agency provides otherwise by rule or order, an application for a package agency, license, permit, or certificate of approval filed under authority of Title 32B, Alcoholic Beverage Control Act, is not considered to be a request for agency action under this chapter.

(7) If the purpose of the adjudicative proceeding is to award a license or other privilege as to which there are multiple competing applicants, the agency may, by rule or order, conduct a single adjudicative proceeding to determine the award of that license or privilege.

2010

63G-4-202. Designation of adjudicative proceedings as informal — Standards — Undesignated proceedings formal.

(1) The agency may, by rule, designate categories of adjudicative proceedings to be conducted informally according to the procedures set forth in rules enacted under the authority of this chapter if:

(a) the use of the informal procedures does not violate any procedural requirement imposed by a statute other than this chapter;

(b) in the view of the agency, the rights of the parties to the proceedings will be reasonably protected by the informal procedures;

(c) in the view of the agency, the agency's administrative efficiency will be enhanced by categorizations; and

(d) the cost of formal adjudicative proceedings outweighs the potential benefits to the public of a formal adjudicative proceeding.

(2) Subject to the provisions of Subsection (3), all agency adjudicative proceedings not specifically designated as informal proceedings by the agency's rules shall be conducted formally in accordance with the requirements of this chapter.

(3) Any time before a final order is issued in any adjudicative proceeding, the presiding officer may convert a formal adjudicative proceeding to an informal adjudicative proceeding, or an informal adjudicative proceeding to a formal adjudicative proceeding if:

(a) conversion of the proceeding is in the public interest; and

(b) conversion of the proceeding does not unfairly prejudice the rights of any party.

2008

63G-4-203. Procedures for informal adjudicative proceedings.

(1) If an agency enacts rules designating one or more categories of adjudicative proceedings as informal adjudicative proceedings, the agency shall, by rule, prescribe procedures for informal adjudicative proceedings that include the following:

(a) Unless the agency by rule provides for and requires a response, no answer or other pleading responsive to the

allegations contained in the notice of agency action or the request for agency action need be filed.

(b) The agency shall hold a hearing if a hearing is required by statute or rule, or if a hearing is permitted by rule and is requested by a party within the time prescribed by rule.

(c) In any hearing, the parties named in the notice of agency action or in the request for agency action shall be permitted to testify, present evidence, and comment on the issues.

(d) Hearings will be held only after timely notice to all parties.

(e) Discovery is prohibited, but the agency may issue subpoenas or other orders to compel production of necessary evidence.

(f) All parties shall have access to information contained in the agency's files and to all materials and information gathered in any investigation, to the extent permitted by law.

(g) Intervention is prohibited, except that the agency may enact rules permitting intervention where a federal statute or rule requires that a state permit intervention.

(h) All hearings shall be open to all parties.

(i) Within a reasonable time after the close of an informal adjudicative proceeding, the presiding officer shall issue a signed order in writing that states the following:

(i) the decision;

(ii) the reasons for the decision;

(iii) a notice of any right of administrative or judicial review available to the parties; and

(iv) the time limits for filing an appeal or requesting a review.

(j) The presiding officer's order shall be based on the facts appearing in the agency's files and on the facts presented in evidence at any hearings.

(k) A copy of the presiding officer's order shall be promptly mailed to each of the parties.

(2) (a) The agency may record any hearing.

(b) Any party, at the party's own expense, may have a reporter approved by the agency prepare a transcript from the agency's record of the hearing.

(3) Nothing in this section restricts or precludes any investigative right or power given to an agency by another statute.

2008

63G-4-204. Procedures for formal adjudicative proceedings — Responsive pleadings.

(1) In all formal adjudicative proceedings, unless modified by rule according to Subsection 63G-4-201(5), the respondent, if any, shall file and serve a written response signed by the respondent or the respondent's representative within 30 days of the mailing date or last date of publication of the notice of agency action or the notice under Subsection 63G-4-201(3)(d), which shall include:

(a) the agency's file number or other reference number;

(b) the name of the adjudicative proceeding;

(c) a statement of the relief that the respondent seeks;

(d) a statement of the facts; and

(e) a statement summarizing the reasons that the relief requested should be granted.

(2) The respondent shall send a copy of the response filed under Subsection (1) to each party.

(3) The presiding officer, or the agency by rule, may permit or require pleadings in addition to the notice of agency action, the request for agency action, and the response. All documents permitted or required to be filed shall be filed with the agency and one copy shall be sent to each party.

2008

63G-4-205. Procedures for formal adjudicative proceedings — Discovery and subpoenas.

(1) In formal adjudicative proceedings, the agency may, by rule, prescribe means of discovery adequate to permit the

(2) Statutes and rules governing agency action, agency review, and judicial review that are in effect on December 31, 1987, govern all agency adjudicative proceedings commenced by or before an agency on or before December 31, 1987, even if those proceedings are still pending before an agency or a court on January 1, 1988.

2008

PART 2

ADJUDICATIVE PROCEEDINGS

63G-4-201. Commencement of adjudicative proceedings.

(1) Except as otherwise permitted by Section 63G-4-502, all adjudicative proceedings shall be commenced by either:

- (a) a notice of agency action, if proceedings are commenced by the agency; or
- (b) a request for agency action, if proceedings are commenced by persons other than the agency.

(2) A notice of agency action shall be filed and served according to the following requirements:

(a) The notice of agency action shall be in writing, signed by a presiding officer, and shall include:

(i) the names and mailing addresses of all persons to whom notice is being given by the presiding officer, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the agency;

(ii) the agency's file number or other reference number;

(iii) the name of the adjudicative proceeding;

(iv) the date that the notice of agency action was mailed;

(v) a statement of whether the adjudicative proceeding is to be conducted informally according to the provisions of rules adopted under Sections 63G-4-202 and 63G-4-203, or formally according to the provisions of Sections 63G-4-204 through 63G-4-209;

(vi) if the adjudicative proceeding is to be formal, a statement that each respondent must file a written response within 30 days of the mailing date of the notice of agency action;

(vii) if the adjudicative proceeding is to be formal, or if a hearing is required by statute or rule, a statement of the time and place of any scheduled hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default;

(viii) if the adjudicative proceeding is to be informal and a hearing is required by statute or rule, or if a hearing is permitted by rule and may be requested by a party within the time prescribed by rule, a statement that the parties may request a hearing within the time provided by the agency's rules;

(ix) a statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

(x) the name, title, mailing address, and telephone number of the presiding officer; and

(xi) a statement of the purpose of the adjudicative proceeding and, to the extent known by the presiding officer, the questions to be decided.

(b) When adjudicative proceedings are commenced by the agency, the agency shall:

(i) mail the notice of agency action to each party;

(ii) publish the notice of agency action, if required by statute; and

(iii) mail the notice of agency action to any other person who has a right to notice under statute or rule.

(3) (a) Where the law applicable to the agency permits persons other than the agency to initiate adjudicative

proceedings, that person's request for agency action shall be in writing and signed by the person invoking the jurisdiction of the agency, or by that person's representative, and shall include:

(i) the names and addresses of all persons to whom a copy of the request for agency action is being sent;

(ii) the agency's file number or other reference number, if known;

(iii) the date that the request for agency action was mailed;

(iv) a statement of the legal authority and jurisdiction under which agency action is requested;

(v) a statement of the relief or action sought from the agency; and

(vi) a statement of the facts and reasons forming the basis for relief or agency action.

(b) The person requesting agency action shall file the request with the agency and shall mail a copy to each person known to have a direct interest in the requested agency action.

(c) An agency may, by rule, prescribe one or more forms eliciting the information required by Subsection (3)(a) to serve as the request for agency action when completed and filed by the person requesting agency action.

(d) The presiding officer shall promptly review a request for agency action and shall:

(i) notify the requesting party in writing that the request is granted and that the adjudicative proceeding is completed;

(ii) notify the requesting party in writing that the request is denied and, if the proceeding is a formal adjudicative proceeding, that the party may request a hearing before the agency to challenge the denial; or

(iii) notify the requesting party that further proceedings are required to determine the agency's response to the request.

(e) (i) Any notice required by Subsection (3)(d)(ii) shall contain the information required by Subsection 63G-4-203(1)(i) in addition to disclosure required by Subsection (3)(d)(ii).

(ii) The agency shall mail any notice required by Subsection (3)(d) to all parties, except that any notice required by Subsection (3)(d)(iii) may be published when publication is required by statute.

(iii) The notice required by Subsection (3)(d)(iii) shall:

(A) give the agency's file number or other reference number;

(B) give the name of the proceeding;

(C) designate whether the proceeding is one of a category to be conducted informally according to the provisions of rules enacted under Sections 63G-4-202 and 63G-4-203, with citation to the applicable rule authorizing that designation, or formally according to Sections 63G-4-204 through 63G-4-209;

(D) in the case of a formal adjudicative proceeding, and where respondent parties are known, state that a written response must be filed within 30 days of the date of the agency's notice if mailed, or within 30 days of the last publication date of the agency's notice, if published;

(E) if the adjudicative proceeding is to be formal, or if a hearing is to be held in an informal adjudicative proceeding, state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in a scheduled and noticed hearing may be held in default;

(F) if the adjudicative proceeding is to be informal, and a hearing is required by statute or rule, or if a hearing is permitted by rule and may be requested by a party within the time prescribed by rule, state the parties' right to request a hearing and the time within which a hearing may be requested under the agency's rules; and

(G) give the name, title, mailing address, and telephone number of the presiding officer.

(4) When initial agency determinations or actions are not governed by this chapter, but agency and judicial review of those initial determinations or actions are subject to the provisions of this chapter, the request for agency action seeking review must be filed with the agency within the time prescribed by the agency's rules.

(5) For designated classes of adjudicative proceedings, an agency may, by rule, provide for a longer response time than allowed by this section, and may provide for a shorter response time if required or permitted by applicable federal law.

(6) Unless the agency provides otherwise by rule or order, an application for a package agency, license, permit, or certificate of approval filed under authority of Title 32B, Alcoholic Beverage Control Act, is not considered to be a request for agency action under this chapter.

(7) If the purpose of the adjudicative proceeding is to award a license or other privilege as to which there are multiple competing applicants, the agency may, by rule or order, conduct a single adjudicative proceeding to determine the award of that license or privilege. 2010

63G-4-202. Designation of adjudicative proceedings as informal — Standards — Undesignated proceedings formal.

(1) The agency may, by rule, designate categories of adjudicative proceedings to be conducted informally according to the procedures set forth in rules enacted under the authority of this chapter if:

(a) the use of the informal procedures does not violate any procedural requirement imposed by a statute other than this chapter;

(b) in the view of the agency, the rights of the parties to the proceedings will be reasonably protected by the informal procedures;

(c) in the view of the agency, the agency's administrative efficiency will be enhanced by categorizations; and

(d) the cost of formal adjudicative proceedings outweighs the potential benefits to the public of a formal adjudicative proceeding.

(2) Subject to the provisions of Subsection (3), all agency adjudicative proceedings not specifically designated as informal proceedings by the agency's rules shall be conducted formally in accordance with the requirements of this chapter.

(3) Any time before a final order is issued in any adjudicative proceeding, the presiding officer may convert a formal adjudicative proceeding to an informal adjudicative proceeding, or an informal adjudicative proceeding to a formal adjudicative proceeding if:

(a) conversion of the proceeding is in the public interest; and

(b) conversion of the proceeding does not unfairly prejudice the rights of any party. 2008

63G-4-203. Procedures for informal adjudicative proceedings.

(1) If an agency enacts rules designating one or more categories of adjudicative proceedings as informal adjudicative proceedings, the agency shall, by rule, prescribe procedures for informal adjudicative proceedings that include the following:

(a) Unless the agency by rule provides for and requires a response, no answer or other pleading responsive to the

allegations contained in the notice of agency action or the request for agency action need be filed.

(b) The agency shall hold a hearing if a hearing is required by statute or rule, or if a hearing is permitted by rule and is requested by a party within the time prescribed by rule.

(c) In any hearing, the parties named in the notice of agency action or in the request for agency action shall be permitted to testify, present evidence, and comment on the issues.

(d) Hearings will be held only after timely notice to all parties.

(e) Discovery is prohibited, but the agency may issue subpoenas or other orders to compel production of necessary evidence.

(f) All parties shall have access to information contained in the agency's files and to all materials and information gathered in any investigation, to the extent permitted by law.

(g) Intervention is prohibited, except that the agency may enact rules permitting intervention where a federal statute or rule requires that a state permit intervention.

(h) All hearings shall be open to all parties.

(i) Within a reasonable time after the close of an informal adjudicative proceeding, the presiding officer shall issue a signed order in writing that states the following:

(i) the decision;

(ii) the reasons for the decision;

(iii) a notice of any right of administrative or judicial review available to the parties; and

(iv) the time limits for filing an appeal or requesting a review.

(j) The presiding officer's order shall be based on the facts appearing in the agency's files and on the facts presented in evidence at any hearings.

(k) A copy of the presiding officer's order shall be promptly mailed to each of the parties.

(2) (a) The agency may record any hearing.

(b) Any party, at the party's own expense, may have a reporter approved by the agency prepare a transcript from the agency's record of the hearing.

(3) Nothing in this section restricts or precludes any investigative right or power given to an agency by another statute. 2008

63G-4-204. Procedures for formal adjudicative proceedings — Responsive pleadings.

(1) In all formal adjudicative proceedings, unless modified by rule according to Subsection 63G-4-201(5), the respondent, if any, shall file and serve a written response signed by the respondent or the respondent's representative within 30 days of the mailing date or last date of publication of the notice of agency action or the notice under Subsection 63G-4-201(3)(d), which shall include:

(a) the agency's file number or other reference number;

(b) the name of the adjudicative proceeding;

(c) a statement of the relief that the respondent seeks;

(d) a statement of the facts; and

(e) a statement summarizing the reasons that the relief requested should be granted.

(2) The respondent shall send a copy of the response filed under Subsection (1) to each party.

(3) The presiding officer, or the agency by rule, may permit or require pleadings in addition to the notice of agency action, the request for agency action, and the response. All documents permitted or required to be filed shall be filed with the agency and one copy shall be sent to each party. 2008

63G-4-205. Procedures for formal adjudicative proceedings — Discovery and subpoenas.

(1) In formal adjudicative proceedings, the agency may, by rule, prescribe means of discovery adequate to permit the

- (b) the payor receives information which:
 - (i) in the payor's good faith judgment, brings into question the entitlement of the person claiming the right to the payment to receive that payment;
 - (ii) has rendered the title unmarketable; or
 - (iii) may expose the payor to the risk of liability to third parties if the payment is made;
 - (c) the total amount of oil and gas proceeds in possession of the payor owed to the person making claim to payment is less than \$100 at the end of any month; or
 - (d) the person entitled to payment has failed or refused to execute a division or transfer order acknowledging the proper interest to which the person claims to be entitled and setting forth the mailing address to which payment may be directed, provided the division or transfer order does not alter or amend the terms of the lease.
- (9) If the circumstances described in Subsection (8)(a) or (b) arise, the payor may:
- (a) suspend and escrow the payments in accordance with Subsection (3); or
 - (b) at the request and expense of the person claiming entitlement to the payment, make the payment into court on an interpleader action to resolve the claim and avoid liability under this chapter.

2010

40-6-9.1. Payment information to royalty owners.

- (1) When payment is made to an owner of a royalty interest for the sale of oil or gas produced from that royalty interest pursuant to the requirements of Section 40-6-9, the following information shall be included on the payor's check stub or on an attachment to the form of payment:
- (a) the lease, property, or well name, and any lease, property, or well identification number from which production is attributed;
 - (b) the month and year of the sales included in the payment;
 - (c) the total volume of oil or gas sold, as measured by the means and upon the standards prescribed by the board pursuant to Subsection 40-6-5(2)(g);
 - (d) the average price per unit of oil or gas sold;
 - (e) the total amount of state severance, ad valorem, and other production taxes;
 - (f) a list of any other deductions or adjustments;
 - (g) the net value of total sales after taxes are deducted;
 - (h) the royalty owner's interest, expressed as a decimal number, in sales from the lease, property, or well;
 - (i) the royalty owner's share of the total value of sales prior to any deductions;
 - (j) the royalty owner's proportionate share of the sales value less the royalty owner's proportionate share of the deductions, as applicable; and
 - (k) an address at which additional information pertaining to the royalty owner's interest in production may be obtained and questions may be answered.
- (2) (a) A royalty owner who fails to receive the information required by this section may notify the board by certified mail of the problem and request that the division conduct an investigation.
- (b) The division shall conduct the investigation and report to the board concerning:
- (i) whether the matter has been resolved; or
 - (ii) whether further action is necessary and its recommendations for resolution of the matter.
- (c) The board may take any action it considers necessary to resolve the matter pursuant to the provisions of this chapter.
- (3) A royalty owner damaged by a violation of this section may proceed as provided in Subsection 40-6-11(7).

1995

40-6-9.5. Permits for crude oil production — Application — Bond requirement — Closure of facilities — Availability of records.

- (1) The division may issue permits authorizing construction, operation, maintenance, and cessation of treating facilities

and operations covered by Subsection 40-6-5(2)(h) and to approve, as part of that permit, post-cessation reclamation of the site.

(2) Each owner and operator of any facility described in Subsection 40-6-5(2)(h) or planning to construct, operate, or maintain a facility described in Subsection 40-6-5(2)(h) shall submit to the division an application stating in detail the location, type, and capacity of the facility contemplated; the extent and location of area disturbed or to be disturbed including, but not limited to, any pits, ponds, or lands associated with the facility; a plan for reclamation of the site; and other materials required by the division. All existing facilities described in Subsection 40-6-5(2)(h) shall submit plans by July 28, 1985. Application for all planned facilities must be approved and a permit issued before any ground clearing or construction may occur.

(3) As a condition for approval of any permit, the owner and operator shall post a bond in an amount determined by the division to cover reclamation costs for the site. Approval of any permit is also conditioned upon compliance with all laws, rules, and orders of the board. Failure to post the bond is considered sufficient grounds to deny a permit.

(4) The board may order the closure of any facility described in Subsection 40-6-5(2)(h) if an application is not forthcoming in the time allowed in Subsection (2), a bond is not posted, a violation of the rules and regulations of other state or federal agencies exists, or for other material and substantial cause.

(5) The owner and operator are subject to all applicable state, federal, and local rules and regulations.

(6) The records required to be kept by Subsection 40-6-5(2)(i) shall be available for inspection and audit by the board or its agents during reasonable working hours.

1989

40-6-10. Procedures — Adjudicative proceedings — Emergency orders — Hearing examiners.

(1) (a) The Board of Oil, Gas, and Mining and the Division of Oil, Gas, and Mining shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

(b) The board shall enact rules governing its practice and procedure that are not inconsistent with Title 63G, Chapter 4, Administrative Procedures Act.

(2) When an emergency requiring immediate action is found by the division director or any board member to exist, the division director or board member may issue an emergency order according to the requirements and procedures of Title 63G, Chapter 4, Administrative Procedures Act.

(3) A notice required by this chapter, except as otherwise provided, shall be given at the election of the board by:

- (a) personal service; or
- (b) (i) one publication in:
 - (A) a daily newspaper of general circulation in the city of Salt Lake and county of Salt Lake, Utah; and
 - (B) all newspapers of general circulation published in the county where the land is situated; and
- (ii) electronic publication in accordance with Section 45-1-101.

(4) (a) Any order made by the board is effective on issuance.

- (b) All rules and orders issued by the board shall be:
 - (i) in writing;
 - (ii) entered in full in books to be kept by the board for that purpose;
 - (iii) indexed; and
 - (iv) public records open for inspection at all times during reasonable office hours.

(c) A copy of any rule, finding of fact, or order, certified by the board or by the division director, shall be received in evidence in all courts of this state with the same effect as the original.

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(5) The board may act upon its own motion or upon the petition of any interested person.

(6) (a) The board may appoint a hearing examiner to take evidence and to recommend findings of fact and conclusions of law to the board.

(b) Any member of the board, division staff, or any other person designated by the board may serve as a hearing examiner.

(c) The board may enter an order based on the recommendations of the examiner. 2009 (1st S.S.)

40-6-11. Power to summon witnesses, administer oaths and require production of records — Enforcement — Penalties for violation of chapter or rules — Illegal oil or gas — Civil liability.

(1) The board may summon witnesses, administer oaths, and require the production of records, books, and documents for examination at any hearing or investigation conducted by it.

(2) (a) If any person fails or refuses to comply with a subpoena issued by the board, or fails or refuses to testify about any matter, the board may apply to any district court in the state for an order compelling that person to comply with the subpoena, and to attend before the board and produce the subpoenaed records, books, and documents for examination, and to give his testimony.

(b) The court may punish the person for contempt as if he disobeyed a subpoena issued by the court, or if he refused to testify in a court.

(3) (a) Whenever it appears that any person is violating any provision of this chapter or any rule or order made under the authority of this chapter, the board may issue an order requiring compliance within a period not to exceed 30 days.

(b) The board may bring suit in the name of the state against any person violating this chapter, or rules or orders made under the authority of this chapter if:

(i) the violation continues after expiration of the time period granted in Subsection (3)(a);

(ii) the violation presents an immediate threat to public health, safety, or welfare; or

(iii) the violation would cause waste.

(4) (a) If the board determines, after an adjudicative proceeding, that any person has violated any provision of this chapter, or any permit, rule, or order made under the provisions of this chapter, that person is subject, in a civil proceeding, to a penalty not exceeding \$5,000 per day for each day of violation.

(b) If the board determines that the violation is willful, that person may be fined not more than \$10,000 for each day of violation.

(5) If ordered to do so by the board, the director of the division may order the immediate closure or shutdown of any well that is operating in violation of the provisions of this chapter, if the closure or shutdown will not cause waste or is necessary because of an immediate threat to public health, safety, or welfare.

(6) (a) No person may sell, purchase, acquire, transport, refine, process, or handle illegal oil, gas, or product, if the person knows or has reason to know that the oil, gas, or product is illegal.

(b) The court in the district where the illegal oil, gas, or product is found, shall, after notice and hearing in an action brought by the board, order the product to be seized and sold, and the proceeds returned or held for the legal owner.

(7) (a) Nothing in this chapter, and no suit by or against the board, and no violation charged or asserted against any person under any provisions of this chapter, or any rule or order issued under the authority of this chapter, shall impair, abridge, or delay any cause of action for

damages that any person may have or assert against any person violating any provision of this chapter, or any rule or order issued under the authority of this chapter.

(b) Any person damaged by any violation may sue for and recover whatever damages that he otherwise may be entitled to receive. 1987

40-6-12. Evasion of chapter or orders — Penalties — Limitation of actions.

(1) (a) A person is guilty of a class A misdemeanor if, for the purpose of evading this chapter or any order of the board, he is convicted of any of the following:

(i) making or causing to be made any false entry in any report, record, account, or memorandum required by this chapter or by any order;

(ii) omitting or causing to be omitted from any report, record, account, or memorandum, full, true, and correct entries as required by this chapter or by any order; or

(iii) removing from this state or destroying, mutilating, altering, or falsifying any record, account, or memorandum.

(b) Upon conviction under Subsection (1), a person is subject to a fine of not more than \$5,000 or imprisonment for a term not exceeding six months, or to both fine and imprisonment.

(2) Any suit, action, or other proceeding based upon a violation of this section may be commenced only within one year from the date of the alleged violation. 2009

40-6-13. Restrictions of production not authorized.

This act shall never be construed to require, permit or authorize the board or any court to make, enter or enforce any order, rule, regulation, or judgment requiring restriction of production of any pool or of any well (except a well drilled in violation of Section 40-6-6 hereof) to an amount less than the well or pool can produce unless such restriction is necessary to prevent waste and protect correlative rights, or the operation of a well without sufficient oil or gas production to cover current operating costs and provide a reasonable return, without regard to original drilling costs. 1983

40-6-14. Fee on oil and gas — Payment of fee — Collection — Penalty and interest on delinquencies — Payment when product taken in-kind — Interests exempt.

(1) (a) There is levied a fee as provided in Subsection (1)(b) for oil and gas:

(i) produced; and

(ii) (A) saved;

(B) sold; or

(C) transported from the field in Utah where the oil or gas is produced.

(b) The fee imposed under this Subsection (1) is equal to the product of:

(i) .002; and

(ii) the value of the oil or gas determined in accordance with Section 59-5-103.1.

(2) (a) The State Tax Commission shall administer the collection of the fee, including any penalties and interest.

(b) The money collected shall be deposited in the Oil and Gas Conservation Account created in Section 40-6-14.5.

(c) Time periods for the State Tax Commission to allow a refund or assess the fee shall be determined in accordance with Section 59-5-114.

(3) (a) Each person having an ownership interest in oil or gas at the time of production shall be liable for a proportionate share of the fee equivalent to that person's ownership interest.

(b) As used in this section "ownership interest" means any:

the results of the informal conference, the operator waives any opportunity for further review of the fact of the violation or to contest the amount of the civil penalty assessed for the violation.

(iii) If, through administrative or judicial review, it is determined that no violation occurred or that the amount of the penalty should be reduced, the division shall, within 30 days, remit the appropriate amount to the operator with interest accumulated.

(3) (a) A civil penalty assessed by the division shall be final only after the person charged with a violation described under Subsection (1) has been given an opportunity for a public hearing.

(b) If a public hearing is held, the board shall make findings of fact and shall issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order requiring that the penalty be paid.

(c) When appropriate, the board shall consolidate the hearings with other proceedings under Section 40-8-9.

(d) A hearing under this section shall be of record and shall be conducted pursuant to board rules governing the proceedings.

(e) If the person charged with a violation does not attend the public hearing, a civil penalty shall be assessed by the division after the division:

(i) has determined:

(A) that a violation did occur; and

(B) the amount of the penalty which is warranted; and

(ii) has issued an order requiring that the penalty be paid.

(4) Civil penalties owed under this chapter may be recovered in a civil action brought by the attorney general of Utah at the request of the board in any appropriate district court of the state.

(5) Any person who willfully and knowingly violates a condition of a permit issued pursuant to this chapter or fails or refuses to comply with an order issued under Section 40-8-9, or any order incorporated in a final decision issued by the board under this chapter, except an order incorporated in a decision issued under Subsection (3), shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year, or both.

(6) Whenever a corporate permittee violates a condition of a permit issued pursuant to this chapter or fails or refuses to comply with any order incorporated in a final decision issued by the board under this chapter, except an order incorporated in a decision issued under Subsection (3), a director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under Subsections (1) and (5).

(7) Any person who knowingly makes a false statement, representation, or certification, or knowingly fails to make a statement, representation, or certification in an application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter or an order or decision issued by the board under this chapter shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year, or both.

(8) (a) An operator who fails to correct a violation for which a notice or cessation order has been issued under Subsection 40-8-9(3)(b) within the period permitted for a correction of the violation shall be assessed a civil penalty of not less than \$750 for each day during which the failure or violation continues.

(b) The period permitted for correction of a violation for which a notice of cessation order has been issued under Subsection 40-8-9(3)(b) may not end until:

(i) the entry of a final order by the board, in a review proceeding initiated by the operator, in which the board orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the operator will suffer irreparable loss or damage from the application of those requirements; or

(ii) the entry of an order of the court, a review proceeding initiated by the operator, in which the court orders the suspension of the abatement requirements of the citation.

(9) Money received by the state from civil penalties collected from actions resulting from this chapter shall be deposited into the division's Abandoned Mine Reclamation Fund as established under Section 40-10-25.1 and shall be used for the reclamation of mined land impacts not covered by reclamation bonds.

2002

40-8-10. Notice.

Except as otherwise provided in this chapter, any notification required by this chapter shall be:

(1) given by the board or division by personal service to individuals directly affected; and

(a) by one publication in a daily newspaper of general circulation in Salt Lake City, Utah; and

(b) in all newspapers of general circulation published in the county or counties in which the land affected is situated; and

(2) by publication in accordance with Section 45-1-101.

2009

40-8-11. Budget of administrative expenses — Procedure — Division authority to appoint or employ consultants.

(1) The division, with the approval of the board, shall prepare a budget of the administrative expenses in carrying out the provisions of this act for the fiscal year next following the convening of the Legislature. This budget shall be submitted to the executive director of the Department of Natural Resources for inclusion in the governor's appropriation request to the Legislature.

(2) The division shall have authority to appoint or employ technical support or consultants in the pursuit of the objectives of this act and shall be responsible for coordination with other agencies in matters relating to mined land reclamation and the application of related laws.

1983

40-8-12. Objectives.

The objectives of mined land reclamation are:

(1) to return the land, concurrently with mining or within a reasonable amount of time thereafter, to a stable ecological condition compatible with past, present, and probable future local land uses;

(2) to minimize or prevent present and future on-site or off-site environmental degradation caused by mining operations to the ecologic and hydrologic regimes and to meet other pertinent state and federal regulations regarding air and water quality standards and health and safety criteria; and

(3) to minimize or prevent future hazards to public safety and welfare.

1987

40-8-12.5. Reclamation required.

Every operator shall be obligated to conduct reclamation and shall be responsible for the costs and expenses thereof.

1987

40-8-13. Notice of intention required prior to mining operations — Assurance of reclamation required in notice of intention — When contents confidential — Approval of notice of intention not required for small mining operations — Procedure for reviewing notice of intention.

(1) (a) Before any operator begins mining operations, or continues mining operations pursuant to Section 40-8-23,

the operator shall file a notice of intention for each individual mining operation with the division.

(b) The notice of intention referred to in Subsection (1)(a) shall include:

- (i) identification of all owners of any interest in a mineral deposit, including any ownership interest in surface land affected by the notice;
- (ii) copies of underground and surface mine maps;
- (iii) locations of drill holes;
- (iv) accurate area maps of existing and proposed operations; and
- (v) information regarding the amount of material extracted, moved, or proposed to be moved, relating to the mining operation.

(c) The notice of intention for small mining operations shall include a statement that the operator shall conduct reclamation as required by rules promulgated by the board.

(d) The notice of intention for mining operations, other than small mining operations, shall include a plan for reclamation of the lands affected as required by rules promulgated by the board.

(2) The division may require that the operator rehabilitate, close, or mitigate the impacts of each drill hole, shaft, or tunnel when no longer needed as part of the mining operation.

(3) Information provided in the notice of intention, and its attachments relating to the location, size, or nature of the deposit that is marked confidential by the operator shall be protected as confidential information by the board and the division and is not a matter of public record unless the board or division obtains a written release from the operator, or until the mining operation has been terminated as provided in Subsection 40-8-21(2).

(4) (a) Within 30 days from the receipt of a notice of intention, the division shall complete its review of the notice and shall make further inquiries, inspections, or examinations that are necessary to properly evaluate the notice.

(b) The division shall notify the operator of any objections to the notice and shall grant the operator a reasonable opportunity to take action that may be required to remove the objections or obtain a ruling relative to the objections from the board.

(5) Except for the form and amount of surety, an approval of a notice of intention for small mining operations is not required.

(6) The notice of intention for mining operations other than small mining operations, shall be reviewed as provided in this Subsection (6).

(a) Within 30 days after receipt of a notice of intention or within 30 days following the last action of the operator or the division on the notice of intention, the division shall make a tentative decision to approve or disapprove the notice of intention.

(b) The division shall:

- (i) mail the information relating to the land affected and the tentative decision to the operator; and
- (ii) publish the information and the decision, in abbreviated form:

(A) one time only, in all newspapers of general circulation published in the county where the land affected is situated; and

(B) in a daily newspaper of general circulation in Salt Lake City, Utah; and

(C) as required in Section 45-1-101.

(c) The division shall also mail a copy of the abbreviated information and tentative decision to the zoning authority of the county in which the land affected is situated and to the owner of record of the land affected.

(d) (i) Any person or agency aggrieved by the tentative decision may file a request for agency action with the division.

(ii) If no requests for agency action are received by the division within 30 days after the last date of publication, the tentative decision on the notice of intention is final and the division shall notify the operator.

(iii) If written objections of substance are received, the division shall hold a formal adjudicative proceeding.

(e) This Subsection (6) does not apply to exploration.

(7) Within 30 days after receipt of a notice of intention concerning exploration operations other than small mining operations, the division will review the notice of intention and approve or disapprove it.

2009

40-8-14. Surety requirement — Liability of small mining operations for failure to reclaim — Forfeiture of surety.

(1) (a) After receiving notification that a notice of intention for mining operations has been approved, but prior to commencement of those operations, the operator shall provide surety to the division, in a form and amount determined by the division or board as provided in this section.

(b) In determining the amount of surety under this section, the division may use the average cost of reclamation per acre.

(c) The board shall annually establish a figure representing the average cost of reclamation per acre after receiving a presentation from the division concerning the average cost of reclamation per acre and providing opportunity for public comment.

(2) (a) Except as provided in Subsection (3), the division shall approve the amount and form of surety.

(b) In determining the amount of surety to be provided, the division shall consider:

(i) the magnitude, type, and costs of approved reclamation activities planned for the land affected; and

(ii) the nature, extent, and duration of operations under the approved notice.

(c) The division shall approve a fixed amount estimated to be required to complete reclamation at any point in time covered by the notice of intent.

(d) (i) The division shall determine the amount of surety required for notices of intention, by using cost data from current large mining sureties.

(ii) The costs shall be adjusted to reflect the nature and scope of activities in the affirmative statement filed under Subsection 40-8-18(4).

(e) (i) In determining the form of surety to be provided by the operator, the division shall approve a method acceptable to the operator consistent with the requirements of this chapter.

(ii) The form of surety that the operator may provide includes, but is not limited to, the following:

- (A) collateral;
- (B) a bond or other form of insured guarantee;
- (C) deposited securities; or
- (D) cash.

(3) (a) If the operator proposes reclamation surety in the form of a written contractual agreement, the board shall approve the form of surety.

(b) In making this decision, the board shall consider:

- (i) the operator's:
 - (A) financial status;
 - (B) assets within the state;
 - (C) past performance in complying with contractual agreements; and
 - (D) facilities available to carry out the planned work;
- (ii) the magnitude, type, and costs of approved reclamation activities planned for the land affected; and

and

(iii) the nature, extent, and duration of operations under the approved notice.

(4) In determining the amount and form of surety to be provided under this section, consideration shall be given to similar requirements made on the operator by landowners, governmental agencies, or others, with the intent that surety requirements shall be coordinated and not duplicated.

(5) The liability under surety provisions shall continue until liability, in part, or in its entirety, is released by the division.

(6) (a) If the operator of a mining operation, including a small mining operation, fails or refuses to carry out the necessary land reclamation as outlined in the approved notice of intention, the board may, after notice and hearing, declare any surety filed for this purpose forfeited.

(b) With respect to the surety filed with the division, the board shall request the attorney general to take the necessary legal action to enforce and collect the amount of liability.

(c) If surety or a bond has been filed with the Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, or any agency of the federal government, the board shall certify a copy of the transcript of the hearing and transmit it to the agency together with a request that the necessary forfeiture action be taken.

(d) The forfeited surety shall be used only for the reclamation of the land to which it relates, and any residual amount returned to the rightful claimant. 2011

40-8-15. Notice of commencement to division — Operations and progress report.

(1) Within 30 days after commencement of mining operations under an approved notice of intention, the operator shall give notice of such commencement to the division.

(2) At the end of each calendar year, unless waived by the division, each operator conducting mining operations under an approved notice of intention shall file an operations and progress report with the division on a form prescribed in the rules promulgated by the board. 1987

40-8-16. Approved notice of intention valid for life of operation — Withdrawal, withholding, or refusal of approval — Procedure and basis.

(1) An approved notice of intention or approved revision of it remains valid for the life of the mining operation, as stated in it, unless the board withdraws the approval as provided in Subsection (2).

(2) The board or the division shall not withdraw approval of a notice of intention or revision of it, except as follows:

(a) Approval may be withdrawn in the event that the operator substantially fails to perform reclamation or conduct mining operations so that the approved reclamation plan can be accomplished.

(b) Approval may be withdrawn in the event that the operator fails to provide and maintain surety as may be required under this chapter.

(c) Approval may be withdrawn in the event that mining operations are continuously shut down for a period in excess of five years, unless the extended period is accepted upon application of the operator.

(3) Approval of a notice of intention may not be refused, withheld, nor withdrawn by the division until the operator, who holds or has applied for such approval, has had an opportunity to request a hearing before the board, present evidence, cross-examine, and participate fully in the proceedings. Based on the record of the hearing, the board will issue an order concerning the refusal, withholding, or withdrawal of the notice of intention. If no hearing is requested, the division may refuse, withhold, or withdraw approval of a notice of intention.

(4) In the event that the division or the board withdraws approval of a notice of intention or its revision, all mining operations included under the notice shall be suspended in accordance with procedures and schedule approved by the division. 1989

40-8-17. Responsibility of operator to comply with applicable rules, regulations and ordinances — Inspections.

(1) The approval of a notice of intention shall not relieve the operator from responsibility to comply with all other applicable statutes, rules, regulations, and ordinances, including but not limited to, those applying to safety, air and water pollution, and public liability and property damage.

(2) As a condition of consideration and approval of a notice of intention, each applicant or operator under a notice of intention shall permit members of the board, the division, or other state agency having lawful interest in the administration of this act, to have the right, at all reasonable times, to enter the affected land and all related properties included in the notice of intention, whether or not approved, to make inspections for the purposes of this act. 1975

40-8-18. Notice of intention to revise operations — Procedure.

(1) (a) Since mining operations and related reclamation plans may need to be revised to accommodate changing conditions or new technology, an operator conducting mining operations under an approved notice of intention shall submit to the division a notice of intention when revising mining operations.

(b) The notice of intention to revise mining operations shall be submitted in the form required by the rules promulgated by the board.

(2) (a) The notice of intention to revise mining operations will be designated as an amendment to the existing notice of intention by the division, based on rules promulgated by the board.

(b) An amendment of a notice of intention will be reviewed and considered for approval or disapproval by the division within 30 days of receipt of a notice of intention to revise mining operations.

(3) (a) A notice of intention to revise mining operations, if not designated as an amendment of a notice of intention as set forth in Subsection (2), shall be processed and considered for approval by the division in the same manner and within the same time period as an original notice of intention.

(b) The operator shall be authorized and bound by the requirements of the existing notice until the revision is acted upon and any revised surety requirements are established and satisfied.

(4) (a) If a change in the operation occurs, a mining operation representative shall submit an amendment to the notice of intention.

(b) Although approval of an amendment to the notice of intention by small mining operations is not required, a revised surety shall be filed by the permittee prior to implementing the amended notice of intention. 2003

40-8-19. Transfer of mining operation under approved notice of intention.

Whenever an operator succeeds to the interest of another operator who holds an approved notice of intention or revision covering a mining operation, by sale, assignment, lease, or other means, the division may release the first operator from his responsibilities under his approved notice of intention, including surety, provided the successor assumes all of the duties of the former operator, to the satisfaction of the division, under this approved notice of intention, including its then approved reclamation plan and the posting of surety.

the Board may, after notice and hearing, order that reclamation be conducted by the Division and that:

1. The costs and expenses of reclamation, together with costs of collection including attorney's fees, be recovered in a civil action brought by the attorney general against the operator in any appropriate court; or

2. Any surety filed for this purpose be forfeited. With respect to the surety filed with the Division, the Board shall request the Attorney General to take the necessary legal action to enforce and collect the amount of liability. Where surety or a bond has been filed with other governmental agencies, the Board shall notify such agency of the hearing findings, and seek forfeiture concurrence as necessary.

R647-4-115. Confidential Information.

Information provided in the notice of intention relating to the location, size, and nature of the mineral deposit, and marked confidential by the operator, shall be protected as confidential information by the Board and the Division. The information will not be a matter of public record until a written release is received from the operator, or until the notice of intention is terminated.

R647-4-116. Public Notice and Appeals.

1. Public notice will be deemed complete when the following actions have been taken:

(1.) A description of the disturbed area and the tentative decision to approve or disapprove the notice of intention shall be published by the Division in abbreviated form, one time only, in all newspapers of general circulation published in the county or counties where the land affected is situated, and in a daily newspaper of general circulation in Salt Lake City, Utah.

(2.) A copy of the abbreviated information and tentative decision shall also be mailed by the Division to the zoning authority of the county or counties in which the land affected is situated and to the owner or owners of record of the land affected, as described in the notice of intention.

2. Any person or agency aggrieved by the tentative decision may file a written protest with the Division, during the public comment period identified in the notice, setting forth factual reasons for the complaint.

3. If no responsive written protests are received by the Division within 30 days after the last date of publication, the tentative decision of the Division on the notice of intention shall be final and the operator will be so notified.

4. If written objections of substance are received by the Division during the public comment period, a hearing shall be held before the Division in accordance with UCA 40-8-13, following which hearing the Division shall issue its decision.

R647-4-117. Notification of Suspension or Termination of Operations.

1. The operator need not notify the Division of the temporary suspension of mining operations.

2. In the case of a termination or a suspension of mining operations that has exceeded, or is expected to exceed two (2) years, the operator shall, upon request, furnish the Division with such data as it may require to evaluate the status of the mining operation, the status of compliance with these rules, and the probable future status of the land affected. Upon review of such data, the Division will take such action as may be appropriate. The Division may grant an extended

suspension period if warranted by a showing of good cause by the operator.

3. The operator shall give the Division prompt written notice of a termination or suspension of large mining operations expected to exceed five (5) years. Upon receipt of notification, the Division shall, within 30 days, make an inspection of the property.

4. Large mining operations that have been approved for an extended suspension period will be reevaluated on a regular basis. Additional interim reclamation or stabilization measures may be required in order for a large mining operation to remain in a continued state of suspension. Reclamation of a large mining operation may be required after five (5) years of continued suspension. The Division will require complete reclamation of the mine site when the suspension period exceeds 10 years, unless the operator appeals to the Board prior to the expiration of the 10-year period and shows good cause for a longer suspension period.

R647-4-118. Revisions.

1. In order to revise a notice of intention, an operator shall file a Notice of Intention to Revise Large Mining Operations (FORM MR-REV). This notice of intention will include all information concerning the revision that would have been required in the original notice of intention.

2. A Notice of Intention to Revise Large Mining Operations (FORM MR-REV) will be processed and considered for approval by the Division in the same manner as an original notice of intention. The operator will be authorized and bound by the requirements of the existing approved notice until the revision is acted upon and any revised surety requirements are satisfied. Those portions of the approved notice of intention not subject to the revision will not be subject to review under this provision.

3. Large mining operations which have a disturbed area of five (5) acres or less may refile as a small mining operation. Reclaimed areas must meet full bond release requirements before they can be excluded from the disturbed acreage.

R647-4-119. Amendments.

1. An amendment is an insignificant change to the approved notice of intention. The Division will review the change and make the determination of significance on a case-by-case basis.

2. A request for an amendment should be filed on the Notice of Intention to Revise Large Mining Operations (FORM MR-REV). An amendment of a large mining operation requires Division approval but does not require public notice.

R647-4-120. Transfer of Notice of Intention.

If an operator wishes to transfer a mining operation to another party, an application for Transfer of Notice of Intention - Large Mining Operations (FORM MR-TRL), must be completed and filed with the Division. The new mine operator will be required to post a new reclamation surety and must assume full responsibility for continued mining operations and reclamation.

R647-4-121. Reports.

1. On or before January 31 of each year, unless waived in writing by the Division, each operator conducting large mining operations must file an Annual Report of Mining Operations (FORM MR-AR) describing its operations during the preceding calendar year. Form MR-AR, includes:

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small mining operation may be required after five (5)
years of continued suspension. The Division will re-
quire complete reclamation of the mine site when the
suspension period exceeds 10 years, unless the oper-
ator appeals to the Board prior to the expiration of the
10-year period and shows good cause for a longer
suspension period.

R647-3-114. Mine Enlargement.

Before enlarging a small mining operation beyond
five (5) acres of surface disturbance, the operator must
file a Notice of Intention to Commence Large Mining
Operations (FORM MR-LMO) and receive Division
approval.

R647-3-115. Revisions.

1. Small mining operators are required to submit a
revision to the complete notice of intention when a
significant change(s) in the small mining operation
occurs. A revision can be made by submitting a revised
FORM MR-SMO (or similar form) and indicating the
portion(s) of the operation which is being revised.

2. Division approval of a revision of small mining
operations is not required but the operational change
may not be implemented until the Division deter-
mines that the revised NOI is complete.

3. In the event the Division or the operator deter-
mine at the time a revision is submitted that the
amount of the current surety does not accurately
reflect the potential cost to complete reclamation at
any point in time during the revised small mining
operations, the Division may undertake a recalcula-
tion of the surety amount as provided in R647-3-111.3.
If the recalculated amount is greater than the amount
of the existing surety, the revised operations may not
be implemented until a revised surety is approved by
the Division.

R647-3-116. Transfer of a Notice of Intention.

If an operator wishes to transfer a small mining
operation to another party, an application form enti-
tled, Transfer of Notice of Intention - Small Mining
Operations (FORM MR-TRS) must be completed and
filed with the Division. The new mine operator must
post adequate reclamation surety and assume full
responsibility for all disturbances of the permitted
operation. The form and amount of surety must be
approved by the Division for the transfer to be com-
plete.

R647-3-117. Reports.

1. On or before January 31 of each year, unless
waived in writing by the Division, each operator
conducting small mining operations must file an op-
erations and progress report (FORM MR-AR) describ-
ing its operations during the preceding calendar year,
including:

1.11. The location of the operation and the number
and date of the applicable Notice of Intention;

1.12. The gross amounts of ore and waste materials
moved during the year, as well as the disposition of
such materials;

1.13. New surface disturbances created during the
year;

1.14. The reclamation work performed during the
year.

2. The operator shall keep and maintain timely
records relating to his performance under the Act and
still make these records available to the Division upon
request.

R647-3-118. Practices and Procedures; Appeals.

The Administrative Procedures, as outlined in the
R647-5 Rules, shall be applicable to minerals regula-
tory proceedings.

R647-3-119. Confidential Information.

Information provided in the notice of intention
relating to the location, size, and nature of the min-
eral deposit, and marked confidential by the operator,
shall be protected as confidential information by the
Board and the Division. The information will not be a
matter of public record until a written release is
received from the operator, or until the notice of
intention is terminated.

References: 40-8-1 et seq.

History: 9581, NEW, 12/01/88; 12230, NSC, 11/27/
91; 12686, NSC, 05/01/92; 15182, 5YR, 12/15/93;
15450, AMD, 03/04/94; 15451, AMD, 03/04/94; 21330,
5YR, 07/27/98; 21758, AMD, 02/26/99; 26455, 5YR,
07/08/2003; 28339, AMD, 02/23/2006; 31512, 5YR,
06/02/2008.

R647-4. Large Mining Operations.

R647-4-101. Filing Requirements and Review Proce-
dures.

R647-4-102. Duration of the Notice of Intention.

R647-4-103. Notice of Intention to Commence Large
Mining Operations.

R647-4-104. Operator(s), Surface and Mineral Own-
er(s).

R647-4-105. Maps, Drawings and Photographs.

R647-4-106. Operation Plan.

R647-4-107. Operation Practices.

R647-4-108. Hole Plugging Requirements.

R647-4-109. Impact Assessment.

R647-4-110. Reclamation Plan.

R647-4-111. Reclamation Practices.

R647-4-112. Variance.

R647-4-113. Surety.

R647-4-114. Failure to Reclaim.

R647-4-115. Confidential Information.

R647-4-116. Public Notice and Appeals.

R647-4-117. Notification of Suspension or Termina-
tion of Operations.

R647-4-118. Revisions.

R647-4-119. Amendments.

R647-4-120. Transfer of Notice of Intention.

R647-4-121. Reports.

R647-4-122. Practices and Procedures; Appeals.

R647-4-101. Filing Requirements and Review Procedures.

Prior to commencement of operations, a Notice of
Intention to Commence Large Mining Operations
(FORM MR-LMO) containing all the required infor-
mation must be filed with and approved by the Divi-
sion and the Division shall have approved the form
and amount of reclamation surety.

1. Within 30 days after receipt of a Notice of
Intention, or within 30 days after receipt of any
subsequent submittal, the Division will complete its
review and notify the operator in writing:

1.11. That the notice of intention is complete; or

1.12. That the notice of intention is incomplete, and
that additional information as identified by the Divi-
sion will be required.

2. Within 30 days after receipt of the notice of
intention or within 30 days following the last action of

the operator or Division on the notice of intention, the Division shall reach a tentative decision with respect to the approval or denial of the notice of intention.

Notice of the tentative decision will then be published in accordance with Rule R647-4-116.

3. Division approval of the notice of intention and execution of the Reclamation Contract (FORM MR-RC) by the operator shall bind the Division and the operator in accordance with the Act and implementing regulations; and, shall enable the operator to conduct mining and reclamation activities in accordance therewith.

4. The operator must notify the Division within 30 days of beginning mining operations.

5. A permittee's retention of an approved notice of intention shall require the paying of permit fees as authorized by the Utah Legislature. The procedures for paying the permit fees are as follows:

5.11. The Division shall notify the operators of record annually of the amount of permit fees authorized by the Utah Legislature for the following notices of intention.

5.11.11. Large Mining Operations (less than 50 acres) (fees calculated on the disturbed acreage permitted/bonded).

5.11.12. Large Mining Operations (greater than 50 acres) (fees calculated on the disturbed acreage permitted/bonded).

5.12. Fees are due beginning July 31, 1998 and thereafter annually, by the last Friday of July as authorized by the Utah Legislature.

5.13. A permittee may avoid payment of the fee by complying with the following requirements:

5.13.11. A permittee will notify the Division of a desire to close out a notice of intention by checking the appropriate box of the permit fees billing form.

5.13.12. The permittee will then arrange with the Division for an onsite inspection of the site to assure that all required reclamation has been performed. If an inspection reveals that an area is not yet suitably reclaimed, then a new billing notice will be issued and the permittee will be given 30 days from the date of the onsite inspection to pay the fee.

R647-4-102. Duration of the Notice of Intention.

The approved notice of intention, including any subsequently approved amendments or revisions, shall remain in effect for the life of the mine. However, the Division may review the permit and require updated information and modifications when warranted. Additionally, failure by the operator to pay permit fees required by R647-4-101(5) or maintain and update reclamation surety as required may, after notice and opportunity for Board hearing result in a withdrawal of the approved notice of intention.

R647-4-103. Notice of Intention to Commence Large Mining Operations.

The notice of intention shall address the requirements of the following rules:

TABLE

RULE #	SUBJECT
R647-4-104	Operator(s), Surface and Mineral Owner(s)
R647-4-105	Maps, Drawings and Photographs
R647-4-106	Operation Plan
R647-4-108	Hole Plugging Requirements
R647-4-109	Impact Assessment
R647-4-110	Reclamation Plan
R647-4-112	Variance

R647-4-104. Operator(s), Surface and Mineral Owner(s).

1. The name, permanent mailing address, and telephone number of the operator responsible for the mining operations and reclamation of the site.

2. The name, permanent mailing address, and telephone number of the surface landowner(s) and mineral owner(s) of all land to be affected by the operations.

3. The federal mining claim number(s), lease number(s), or permit number(s) of any mining claims, or federal or state leases or permits included in the lands affected.

R647-4-105. Maps, Drawings and Photographs.

1. A topographic base map must be submitted with the notice of intention. The scale should be approximately 1 inch = 2,000 feet, preferably a USGS 7.5 minute series or equivalent topographic map where available. The following information shall be included on the map:

1.11. Property boundaries of surface ownership of all lands which are to be affected by the mining operations;

1.12. Perennial streams, springs and other bodies of water, roads, buildings, landing strips, electrical transmission lines, water wells, oil and gas pipelines, existing wells, boreholes, or other existing surface or subsurface facilities within 500 feet of the proposed mining operations;

1.13. Proposed route of access to the mining operations from nearest publicly maintained highway. The map scale will be appropriate to show access.

1.14. Known areas which have been previously impacted by mining or exploration activities within the proposed disturbed area.

2. A surface facilities map shall be provided at a scale of approximately 1" = 200' or other scale as determined necessary by the Division. The following information shall be included on the surface facilities map:

2.11. Proposed surface facilities, including but not limited to buildings, stationary mining/processing equipment, roads, utilities, power lines, proposed drainage control structures, and, the location of topsoil storage areas, tailings or processed waste facilities, disposal areas for overburden, solid and liquid wastes and wastewater discharge treatment and containment facilities;

2.12. A border clearly outlining the acreage proposed to be disturbed by mining operations.

3. The following maps, drawings or cross sections may be required by the Division:

3.11. Regraded Slopes to be left at steeper than 2h:1v;

3.12. Plans, profiles and cross sections of roads, pads or other earthen structures to be left as part of the postmining land use;

3.13. Water impounding structures with embankments greater than 20 feet in height from the upstream toe of the embankment or greater than 20 acre feet in storage capacity;

3.14. Maps identifying surface areas which will be disturbed by the operator but will not be reclaimed, such as solid rock slopes, cuts, roads, or sites of buildings or surface facilities to be left as part of the postmining land use;

3.15. Sediment ponds, diversion channels, culvert size and locations, and other hydrologic designs and features to be incorporated into the mining and reclamation plan;

granted by a showing of good

shall give the Division prompt notification or suspension of large mining operation to exceed five (5) years. Upon, the Division shall, within section of the property.

operations that have been approved. A suspension period will be on a year basis. Additional interim reclamation measures may be required after five (5) years. Reclamation of a mining operation may be required after five (5) years. The Division will re-evaluate the mine site when the operation expires 10 years, unless the operator files a notice of intention prior to the expiration of the operation. A good cause for a longer

a notice of intention, an intention to revise large mining operations (FORM MR-REV). This notice must include all information that would have been required in a notice of intention.

Notice to Revise Large Mining Operations (FORM MR-REV) will be processed and approved by the Division in the same manner as a notice of intention. The operation is bound by the requirements of the approved notice of intention until the revision is approved. A notice of intention of revision will not be subject to Division review.

Operations which have a disturbed area may refile as a small area. Disturbed areas must meet full reclamation before they can be extended acreage.

A significant change to the operation. The Division will review the determination of significant change.

An amendment should be filed on a Notice to Revise Large Mining Operations (FORM MR-REV). An amendment of a large mining operation requires Division approval but does not require a new notice of intention.

Notice of Intention.

When transferring a mining operation to a new location for Transfer of Notice of Intention Operations (FORM MR-REV) must be filed with the Division. The operator must be required to post a new bond and assume full responsibility for operations and reclamation.

Every 31 of each year, unless otherwise directed by the Division, each operator must file an Annual Reclamation Report (FORM MR-AR) during the preceding calendar year.

1.11. The location of the operation and file number of the approved notice of intention;

1.12. The gross amounts of ore and waste materials moved during the year, as well as the disposition of such materials;

1.13. The reclamation work performed during the year and new surface disturbances created during the year.

2. The operator shall include an updated map depicting surface disturbance and reclamation performed during the year, prepared in accordance with Rule R647-4-105.

3. The operator shall keep and maintain timely records relating to his performance under the Act, and shall make these records available to the Division upon request.

R647-4-122. Practices and Procedures; Appeals.

The Administrative Procedures, as outlined in the R647-5 Rules, shall be applicable to minerals regulatory proceedings.

References: 40-8-1 et seq.

History: 9582, NEW, 12/01/88; 12231, NSC, 11/27/91; 15183, 5YR, 12/15/93; 15452, AMD, 03/04/94; 15453, AMD, 03/04/94; 21331, 5YR, 07/27/98; 21759, AMD, 02/26/99; 22121, NSC, 07/06/99; 23817, AMD, see CPR; 23817, CPR, 10/01/2001; 26456, 5YR, 07/08/2003; 28340, AMD, 02/23/2006; 31513, 5YR, 06/02/2008.

R647-5. Administrative Procedures.

R647-5-101. Formal and Informal Proceeding.

R647-5-102. Informal Process.

R647-5-103. Definitions.

R647-5-104. Commencement of Adjudicative Proceedings.

R647-5-105. Conversion of Informal to Formal Phase.

R647-5-106. Procedures for Informal Phase.

R647-5-107. Exhaustion of Administrative Remedies.

R647-5-108. Waivers.

R647-5-109. Severability.

R647-5-110. Construction.

R647-5-111. Time Periods.

R647-5-101. Formal and Informal Proceeding.

1. Adjudicative proceedings which shall commence formally before the Board in accordance with the "Rules of Practice and Procedure Before the Board of Oil, Gas and Mining", the R641 rules, include the following: R647-2-112, Failure to Reclaim, Forfeiture of Surety; R647-3-112, Failure to Reclaim, Forfeiture of Surety; R647-3-113.5, Over 10-Year Suspension; R647-4-114, Failure to Reclaim, Forfeiture of Surety; R647-4-117.4, Over 10-Year Suspension.

2. Adjudicative proceedings which shall commence informally before the Division in accordance with this Rule R647-5 include the following: R647-2-101, Notice of Intent to Commence Mining Operations; R647-2-102, Extension; R647-2-107, Operation Practices; R647-2-108, Unplugged Over 30 Days/Alternate Plan; R647-2-109, Reclamation Practices Variance; R647-2-109.13, Revegetation Approval; R647-2-110, Variance, Revocation or Adjustment of Variance; R647-2-111, Release of Surety; R647-2-114, New or Revised Notice of Intention; R647-3-101, Notice of Intention to Commence Small Mining Operations; R647-3-107, Operation Practices; R647-3-108, Unplugged over 30 Days/Alternate Plan; R647-3-109,

Reclamation Practices Variance; R647-3-109.13, Revegetation Approval; R647-3-110, Variance, Revocation, or Adjustment of Variance; R647-3-111, Release of Surety; R647-3-113.1, Waiver, Annual Report; R647-3-113.3 and R647-3-113.4, Termination or Suspension; R647-3-113.5, Reevaluations, Reclamation; R647-3-114, Mine Enlargement; R647-3-115, Revisions; R647-3-117, Report Waiver; R647-4-101, Notice of Intention to Commence Large Mining Operation; R647-4-102, Updated Information or Modifications; R647-4-107, Operation Practices; R647-4-108, Unplugged over 30 Days/Alternate Plan; R647-4-111, Reclamation Practice, Variance; R647-4-111.13, Revegetation Approval; R647-4-112, Variances, Revocation or Adjustment; R647-4-113, Release of Surety; R647-4-117.3 and R647-4-117.4, Termination or Suspension; R647-4-118, Revisions; R647-4-119, Amendments; R647-4-121, Annual Report, Waiver.

3. Adjudicative proceedings which shall commence before the Board but follow the procedures for the informal process in this Rule R647-5 include the following:

R647-2-111, Surety, Form and Amount; R647-3-111, Surety, Form and Amount; and R647-4-113, Surety, Form and Amount.

R647-5-102. Informal Process.

Adjudicative proceedings declared by these rules hereinabove to commence in the informal phase shall be processed according to Rule R647-5 et seq. below. All other requirements of the Mineral Rules shall apply when they supplement these rules governing the informal phase and when not in conflict with any of the rules of R647-5. Notwithstanding this, any longer time periods provided for in the Mineral Rules shall apply.

R647-5-103. Definitions.

Definitions as used in these rules may be found under R647-1-106.

R647-5-104. Commencement of Adjudicative Proceedings.

1. Except for emergency orders described further in these rules, all adjudicative proceedings that commence in the informal phase shall be commenced by either:

1.11. A Notice of Agency Action, if proceedings are commenced by the Board or Division; or

1.12. A Request for Agency Action, if proceedings are commenced by persons other than the Board or Division.

2. A Notice of Agency Action shall be filed and served according to the following requirements:

2.11. The Notice of Agency Action shall be in writing and shall be signed on behalf of the Board if the proceedings are commenced by the Board, or by or on behalf of the Division Director if the proceedings are commenced by the Division. A Notice shall include:

2.11.111 The names and mailing addresses of all persons to whom notice is being given by the Board or Division, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the Board or Division;

2.11.112 The Division's file number or other reference number;

2.11.113 The name of the adjudicative proceeding;

2.11.114 The date that the Notice of Agency Action was mailed;

2.11.115 A statement that the adjudicative proceeding is to be conducted informally according to the provisions of these Rules and Sections 63G-4-202 and

63G-4-203 of the Utah Code Annotated (1953, as amended), if applicable;

2.11.116 A statement that the parties may request an informal hearing before the Division within ten (10) days of the date of mailing or publication and that failure to make such a request for hearing may preclude that party from any further participation, appeal or judicial review in regard to the subject adjudicative proceeding;

2.11.117 A statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

2.11.118 The name, title, mailing address, and telephone number of the Division Director; and

2.11.119 A statement of the purpose of the adjudicative proceeding and, to the extent known by the Division Director, the questions to be decided.

2.12. Unless waived, the Division shall:

2.12.111 Mail the Notice of Agency Action to each party and any other person who has a right to notice under statute or rule; and

2.12.112 Publish the Notice of Agency Action if required by statute or by the Mineral Rules.

2.13. All the listed adjudicative processes that commence informally may be petitioned for by a person other than the Division or Board. That person's Request for Agency Action shall be in writing and signed by the person invoking the jurisdiction of the Division or by his or her attorney, and shall include:

2.13.111 The names and addresses of all persons to whom a copy of the Request for Agency Action is being sent;

2.13.112 A space for the Division's file number or other reference number;

2.13.113 Certificate of mailing of the Request for Agency Action;

2.13.114 A statement of the legal authority and jurisdiction under which Division action is requested;

2.13.115 A statement of the relief or action sought from the Division; and

2.13.116 A statement of the facts and reasons forming the basis for relief or action.

2.14. The person requesting the Division action shall use the forms of the Division with the additional information required by Rule R647-5-104.2.13 above. The Division is hereby authorized to codify said forms in conformance with this rule. Said forms shall be deemed a Request for Agency Action. The person requesting agency action shall file the request with the Division and shall, unless waived, send a copy by mail to each person known to have a direct interest in the requested agency action.

2.15. In the case of a Request for Agency Action, the Division shall, unless waived, ensure that notice by mail has been promptly given to all parties, or by publication when required by statute or the Mineral Rules. The written notice shall:

2.15.111 Give the Division's file number or other reference number;

2.15.112 Give the name of the proceeding;

2.15.113 Designate that the proceeding is to be conducted informally according to the provisions of these Rules and Section 63G-4-202 and 63G-4-203 of Utah Code Annotated (1953, as amended), if applicable;

2.15.114 A statement that the parties may request an informal hearing before the Division within ten (10) days of the date of mailing or publication and that failure to make such a request may preclude that party from any further participation, appeal or judi-

cial review in regard to the subject adjudicative proceeding;

2.15.115 Give the name, title, mailing address, and telephone number of the Division Director; and

2.15.116 If the purpose of the adjudicative proceeding is to award a license or other privilege as to which there are multiple competing applicants, the Division may, by rule or order, conduct a single adjudicative proceeding to determine the award of that license or privilege.

R647-5-105. Conversion of Informal to Formal Phase.

1. Any time before a final order is issued in any adjudicative proceeding before the Division, the Division Director may convert an informal adjudicative proceeding to a formal adjudicative proceeding if:

1.11. Conversion of the proceeding is in the public interest; and

1.12. Conversion of the proceeding does not unfairly prejudice the rights of any party.

2. An adjudicative proceeding which commences informally shall also be processed formally if an appeal to the Board is filed under the rules hereinbelow. Such an appeal changes the character of the adjudicative process to a contested case which requires a formal hearing process before the Board or its designated Hearing Examiner to best protect the interests of the public as well as the parties involved.

R647-5-106. Procedures for Informal Phase.

1. A Request for Agency Action or Notice of Agency Action shall be the method of commencement of an adjudicative process as previously discussed in these rules.

2. The mailing requirements of Rule R647-5-104.2.12.111 and R647-5-104.2.14, whichever is applicable, shall be met.

3. The Notice of Agency Action shall be published in a newspaper of general circulation likely to give notice to interested persons when required by statute or by these Mineral Rules.

4. All notices required herein shall indicate the date of publication or mailing and specify that any affected person may file with the Division within ten (10) days of said date, a written objection and request for informal hearing before the Division and that failure to make such a request may preclude that person from further participation, appeal or judicial review in regard to the subject adjudicative proceeding. Said ten (10) day period shall be waived if the Division receives a waiver signed by those entitled to notice under these rules.

5. In any hearing, the parties named in the Notice of Agency Action or in the Request for Agency action shall be permitted to testify, present evidence, and comment on the issues.

6. Hearings will be held only after timely notice to all parties.

7. Discovery is prohibited, but the Division Director may issue subpoenas or other orders to compel production of necessary evidence.

8. All parties shall have access to information contained in the Division's files and to all materials and information gathered in by investigation, or to the extent permitted by law.

9. Intervention is prohibited, except where required by federal statute or rule.

10. All hearings shall be open to all parties.

11. Within a reasonable time after the close of the hearing, or after the parties' failure to request a

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Applicability, Type of Operations

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the federal government, and
urtherance of the purposes of
l Reclamation Act. The Division

is authorized to enter into cooperative agreements
and develop memoranda of understanding with agen-
cies in furtherance of the purposes of the Act. The
objective is to minimize the need for operators to
undertake duplicative, overlapping, excessive, or con-
flicting procedures.

3. Operator Responsibilities, Compliance with other Local, State and Federal Laws:

The approval or acceptance of a complete notice of
intention shall not relieve an operator from his re-
sponsibility to comply with the applicable statutes,
rules, regulations, and ordinances of all local, state
and federal agencies with jurisdiction over any aspect
of the operator's mining operations, including, but not
limited to: Utah State Division of Water Rights, the
Utah Department of Business Regulation, the Utah
State Industrial Commission, the Utah Department of
Environmental Quality, the Utah Division of State
History, the Division of Forestry, Fire and State
Lands, The School and Institutional Trust Lands
Administration, the Utah Division of Wildlife Re-
sources, the U. S. Fish and Wildlife Service, the
United States Bureau of Land Management, the
United States Forest Service, the United States En-
vironmental Protection Agency, and local county or
municipal governments.

4. Division Guidelines, Operator Assistance in Application Preparation:

Each operator who conducts mining operations on
any lands within the state of Utah is responsible for
compliance with the following rules. The Division
shall provide guidelines to aid the operator in comply-
ing with the rules.

R647-1-103. General Rules.

The following are general rules for statewide appli-
cation.

R647-1-104. Violations and Enforcement.

If after notice and hearing, the Board finds that a
violation of the Act, these rules, a notice of intention,
or a Board or Division order has occurred, the Board
may take any enforcement action authorized by law
including requiring: compliance, abatement, mitiga-
tion, cessation of operations, a civil suit, forfeiture of
surety, reclamation, or any other lawful action.

R647-1-105. Forms.

The attached forms are intended for the conven-
ience of the operator and the Division, and may be
changed from time to time. The forms are not part of
these rules and use of a particular form, though
encouraged, is not required, as long as all of the
necessary information is provided in a reasonable
manner.

R647-1-106. Definitions.

"Act" means the Utah Mined Land Reclamation Act,
enacted in 1975, as amended. (Section 40-8-1, et seq.,
UCA).

"Adjudicative proceeding" means an agency action
or proceeding that determines the legal rights, duties,
privileges, immunities, or other legal interests of one
or more identifiable persons, including all agency
actions to grant, deny, revoke, suspend, modify, annul,
withdraw, or amend an authority, right, or license;
and judicial review of all of such actions. Those
matters not governed by Title 63G, Chapter 4, Admin-
istrative Procedures Act, of the Utah Code annotated
(1963, as amended) shall not be included within this
definition.

"Agency" means a board, commission, department,
division, officer, council, office, committee, commis-
sion, bureau, or other administrative unit of this
state, including the agency head, agency employees,
or other persons acting on behalf of or under the
authority of the agency head, but does not mean the
Legislature, the courts, the governor, any political
subdivision of the state, or any administrative unit of
a political subdivision of the state.

"Agency head" means an individual or body of
individuals in whom the ultimate legal authority of
the agency is vested by statute.

"Amendment" is an insignificant change in the
approved notice of intention.

"Approved Notice of Intention" means a formally
filed notice of intention to commence mining opera-
tions, including any amendments or revisions thereto
that is determined to be complete and contains a
mining and reclamation plan, which has been ap-
proved by the Division. A notice of intention for
exploration having a disturbed area of five acres or
less, or a small mining operation must be determined
complete in writing by the Division, but does not
require a mining and reclamation plan.

"Board" means the Utah Board of Oil, Gas and
Mining. The Board shall hear all appeals of adjudica-
tive proceedings which commenced before the Divi-
sion as well as all adjudicative proceedings and other
proceedings which commence before the Board. The
Board may appoint a Hearing Examiner for its hear-
ings in accordance with the Rules of Practice and
Procedure before the Board of Oil, Gas and Mining.

"Deleterious Materials" means earth, waste or in-
troduced materials exposed by mining operations to
air, water, weather or microbiological processes,
which would likely produce chemical or physical con-
ditions in the soils or water that are detrimental to
the biota or hydrologic systems.

"Deposit" or "mineral deposit" means an accumula-
tion of mineral matter in the form of consolidated
rock, unconsolidated materials, solutions, or other-
wise occurring on the surface, beneath the surface, or
in the waters of the land from which any useful
product may be produced, extracted or obtained, or
which is extracted by underground mining methods
for underground storage. "Deposit" or "mineral de-
posit" excludes sand, gravel, rock aggregate, water,
geothermal steam, and oil and gas, but includes oil
shale and bituminous sands extracted by mining
operations.

"Development" means the work performed in rela-
tion to a deposit following its discovery, but prior to
and in contemplation of production mining opera-
tions. Development includes, but is not limited to,
preparing the site for mining operations; further de-
fining the ore deposit by drilling or other means;
conducting pilot plant operations; and constructing
roads or ancillary facilities.

"Disturbed Area" means the surface land disturbed
by mining operations. The disturbed area for small
mining operations shall not exceed five acres. The
disturbed area for large mining operations shall not
exceed the acreage described in the approved notice of
intention.

"Division" means the Utah Division of Oil, Gas and
Mining. The Division Director or designee is the
Presiding Officer for all informal adjudicative pro-
ceedings which commence before the Division in ac-
cordance with Rule R647-5.

"Exempt Mining Operations" means those mining
operations which were previously exempt from the Act

because less than 500 tons of material was mined in a period of twelve consecutive months or less than two acres of land was excavated or used as a disposal site in a period of twelve consecutive months. These exemptions were eliminated by statutory amendments in 1986 and are no longer available.

"Exploration" means surface disturbing activities conducted for the purpose of discovering a deposit or mineral deposit, delineating the boundaries of a deposit or mineral deposit, and identifying regions or specific areas in which deposits or mineral deposits are most likely to exist. "Exploration" includes, but is not limited to: sinking shafts; tunneling; drilling holes; digging pits or cuts; building roads and other access ways.

"Gravel" means a naturally occurring unconsolidated to moderately consolidated accumulation of rock and mineral particles, the dominant size range being between 2mm and 10mm, which has been deposited by sedimentary processes.

"Land affected" means the surface and subsurface of an area within the state where mining operations are being or will be conducted, including, but not limited to: (a) on-site private ways, roads, and railroads; (b) land excavations; (c) exploration sites; (d) drill sites or workings; (e) refuse banks or spoil piles; (f) evaporation or settling ponds; (g) stockpiles; (h) leaching dumps; (i) placer areas; (j) tailings ponds or dumps; (k) work, parking, storage, or waste discharge areas, structures, and facilities. Land affected does not include: (x) lands which have been reclaimed in accordance with an approved plan or as otherwise approved by the Board, (y) lands on which mining operations ceased prior to July 1, 1977, or (z) lands on which previously exempt mining operations ceased prior to April 29, 1989.

"Large Mining Operations" means mining operations which have a disturbed area of more than five surface acres at any time.

"License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by statute.

"Mining operations" means those activities conducted on the surface of the land for the exploration for, development of, or extraction of a mineral deposit, including, but not limited to, surface mining and the surface effects of underground and in situ mining; on-site transportation, concentrating, milling, evaporation, and other primary processing. "Mining operation" does not include: the extraction of sand, gravel, and rock aggregate; the extraction of oil and gas; the extraction of geothermal steam; smelting or refining operations; off-site operations and transportation; reconnaissance activities; or activities which will not cause significant surface resource disturbance and do not involve the use of mechanized earth-moving equipment, such as bulldozers or backhoes.

"Notice of Intention" means a notice of intention to commence mining operations, that provide the complete information required for authorization to conduct mining operations, and includes any amendments or revisions thereto.

"Off-site" means the land areas that are outside of or beyond the on-site land.

"On-site" means the surface lands on or under which surface or underground mining operations are conducted. A series of related properties under the control of a single operator but separated by small parcels of land controlled by others will be considered a single site unless excepted by the Division.

"Operator" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative of any kind, either public or private, owning, controlling, conducting, or managing a mining operation or proposed mining operation.

"Owner" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative of any kind, either public or private, owning, controlling, conducting, or managing a mineral deposit or the surface of lands employed in mining operations.

"Party" means the Board, Division or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the Board to intervene in the proceeding, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.

"Permit" means a notice to conduct mining operations issued by the Division. A notice to conduct mining operations is issued by the Division when either a notice of intention for a small mining operation or exploration is determined to be complete and includes a surety approved by the Division, or a notice of intention for a large mining operation or exploration with a plan of operations and surety approved by the Division.

"Person" means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or another agency.

"Presiding Officer" means an agency head, or an individual or body of individuals designated by the agency head, by the agency's rules, or by statute to conduct an adjudicative proceeding. For the purpose of these rules, the Board, or its appointed Hearing Examiner, shall be considered the Presiding Officer of all appeals of informal adjudicative proceedings which commenced before the Division as well as all adjudicative proceedings which commence before the Board. The Division Director or his/her designee shall be considered a Presiding Officer for all informal adjudicative proceedings which commence before the Division in accordance with this Rule R647-5. If fairness to the parties is not compromised, an agency may substitute one Presiding Officer for another during any proceeding.

"Reclamation" means actions performed during or after mining operations to shape, stabilize, revegetate, or otherwise treat the land affected in order to achieve a safe and ecologically stable condition and use which will be consistent with local environmental conditions and land management practices.

"Regrade or Grade" means to physically alter the topography of any land surface.

"Respondent" means any person against whom an adjudicative proceeding is initiated, whether by an agency or any other person.

"Revision" means a change to an approved Notice of Intention to Conduct Mining Operations, which will increase or decrease the amount of land affected, or alter the location and type of on-site surface facilities, such that the nature of the reclamation plan will differ substantially from that in the approved Notice of Intention.

"Rock Aggregate" means those consolidated rock materials associated with a sand deposit, a gravel deposit, or a sand and gravel deposit, that were

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Part 3 Finances

- Section
79-2-301. Budget.
79-2-302. Fees.
79-2-303. Species Protection Account.
79-2-304. Natural Resources Conservation Easement Account.
79-2-305. Wetlands Protection Account [Contingent on 2002 settlement agreement between U.S. Dept. of the Interior and state Dept. of Natural Resources].
79-2-306. Recreational Trails and Streams Enhancement and Protection Account [Contingent on 2002 settlement agreement between U.S. Dept. of the Interior and state Dept. of Natural Resources].

Part 4 Miscellaneous

- 79-2-401. Volunteer workers authorized.
79-2-402. Outdoor recreation facilities — Participation in federal programs — Comprehensive plan.
79-2-403. Rulemaking for sale of real property — Licensed or certified appraisers — Exceptions.
79-2-404. Contracting powers of department — Health insurance coverage.

PART 1

GENERAL PROVISIONS

79-2-101. Title.

This chapter is known as the "Department of Natural Resources." 2009

79-2-102. Definitions.

As used in this chapter:

- (1) "Conservation officer" is as defined in Section 23-13-2.
- (2) "Species protection" means an action to protect a plant or animal species identified as:
 - (a) sensitive by the state; or
 - (b) threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.
- (3) "Volunteer" means a person who donates a service to the department or a division of the department without pay or other compensation. 2009

PART 2

DEPARTMENT CREATION AND ADMINISTRATION

79-2-201. Department of Natural Resources created.

- (1) There is created the Department of Natural Resources.
- (2) The department comprises the following:
 - (a) Board of Water Resources, created in Section 73-10-1.5;
 - (b) Forestry, Fire, and State Lands Advisory Council, created in Section 65A-1-2;
 - (c) Board of Oil, Gas, and Mining, created in Section 40-6-4;
 - (d) Board of Parks and Recreation, created in Section 79-4-301;
 - (e) Wildlife Board, created in Section 23-14-2;
 - (f) Board of the Utah Geological Survey, created in Section 79-3-301;
 - (g) Water Development Coordinating Council, created in Section 73-10c-3;

- (h) Division of Water Rights, created in Section 73-2-1.1;
- (i) Division of Water Resources, created in Section 73-10-18;
- (j) Division of Forestry, Fire, and State Lands, created in Section 65A-1-4;
- (k) Division of Oil, Gas, and Mining, created in Section 40-6-15;
- (l) Division of Parks and Recreation, created in Section 79-4-201;
- (m) Division of Wildlife Resources, created in Section 23-14-1;
- (n) Utah Geological Survey, created in Section 79-3-201;
- (o) Heritage Trees Advisory Committee, created in Section 65A-8-306;
- (p) Recreational Trails Advisory Council, authorized by Section 79-5-201;
- (q) Boating Advisory Council, authorized by Section 73-18-3.5;
- (r) Wildlife Board Nominating Committee, created in Section 23-14-2.5; and
- (s) Wildlife Regional Advisory Councils, created in Section 23-14-2.6. 2009

79-2-202. Executive director of Department of Natural Resources — Appointment — Removal — Compensation — Responsibilities — Department fee schedule [Effective until execution and funding of 2002 settlement agreement between U.S. Dept. of the Interior and state Dept. of Natural Resources].

- (1) (a) The chief administrative officer of the department is an executive director appointed by the governor with the consent of the Senate.
(b) The executive director may be removed at the will of the governor.
(c) The executive director shall receive a salary established by the governor within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.
- (2) The executive director shall:
 - (a) administer and supervise the department and provide for coordination and cooperation among the boards, divisions, councils, and committees of the department;
 - (b) approve the budget of each board and division;
 - (c) participate in regulatory proceedings as appropriate for the functions and duties of the department;
 - (d) report at the end of each fiscal year to the governor on department, board, and division activities; and
 - (e) perform other duties as provided by statute.
- (3) By following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act, the executive director, may accept an executive or legislative provision that is enacted by the federal government, whereby the state may participate in the distribution, disbursement, or administration of a fund or service from the federal government for purposes consistent with the powers and duties of the department.
- (4) (a) The executive director, in cooperation with the governmental entities having policymaking authority regarding natural resources, may engage in studies and comprehensive planning for the development and conservation of the state's natural resources.
(b) The executive director shall submit any plan to the governor for review and approval. 2009

Executive director of Department of Natural Resources — Appointment — Removal — Compensation — Responsibilities — Department fee schedule [Effective upon execution and funding of 2002 settlement agreement between U.S. Dept. of the Interior and state Dept. of Natural Resources].

- (1) (a) The chief administrative officer of the department is an executive director appointed by the governor with the consent of the Senate.

(b) The executive director may be removed at the will of the governor.

(c) The executive director shall receive a salary established by the governor within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

(2) The executive director shall:

(a) administer and supervise the department and provide for coordination and cooperation among the boards, divisions, councils, and committees of the department;

(b) approve the budget of each board and division;

(c) participate in regulatory proceedings as appropriate for the functions and duties of the department;

(d) ensure that funds appropriated to the department from the Wetlands Protection Account created by Section 79-2-305 are expended in accordance with that section;

(e) ensure that funds appropriated to the department from the Recreational Trails and Streams Enhancement and Protection Account created by Section 79-2-306 are expended in accordance with that section;

(f) report at the end of each fiscal year to the governor on department, board, and division activities; and

(g) perform other duties as provided by statute.

(3) By following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act, the executive director may accept an executive or legislative provision that is enacted by the federal government, whereby the state may participate in the distribution, disbursement, or administration of a fund or service from the federal government for purposes consistent with the powers and duties of the department.

(4) (a) The executive director, in cooperation with the governmental entities having policymaking authority regarding natural resources, may engage in studies and comprehensive planning for the development and conservation of the state's natural resources.

(b) The executive director shall submit any plan to the governor for review and approval. 2009

79-2-203. Policy board members.

(1) Members of a policy board within the department shall be appointed consistent with the following criteria:

(a) geographical distribution;

(b) expertise or personal experience with subject matter;

(c) diversity of opinion and political preference; and

(d) gender, cultural, and ethnic representation.

(2) The governor may remove a member at any time for official misconduct, habitual or willful neglect of duty, or for other good and sufficient cause.

(3) No member of the Legislature may serve as a member of a division policy board.

(4) (a) In addition to the disclosures required by Section 67-16-7, a board member shall disclose any conflict of interest to the board.

(b) Notwithstanding Section 67-16-9, a board member with a substantial conflict may serve on the board if the member refrains from voting on a board action when the conflict involves:

(i) a direct financial interest in the subject under consideration; or

(ii) an entity or asset that could be substantially affected by the outcome of board action. 2009

79-2-204. Division directors — Appointment — Removal — Jurisdiction of executive director.

(1) (a) The chief administrative officer of a division within the department is a director appointed by the executive director with the concurrence of the board having policy authority for the division.

(b) The director of a division may be removed from office by the executive director.

(c) The appointment and term of office of the state engineer, notwithstanding anything to the contrary contained in this section, shall be in accordance with Section 73-2-1.

(2) (a) The executive director has administrative jurisdiction over a division director for the purpose of implementing department policy as established by the division's board.

(b) The executive director may:

(i) consolidate personnel and service functions in the divisions to effectuate efficiency and economy in the operations of the department;

(ii) establish a departmental services division to perform service functions; and

(iii) employ law enforcement officers and special function officers within the department that have all of the powers of a conservation officer and law enforcement officer, with the exception of the power to serve civil process. 2009

79-2-205. Procedures — Adjudicative proceedings.

Except as provided by Sections 40-10-13, 63G-4-102, and 73-2-25, a division, board, council, or committee referred to in Section 79-2-201 shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in an adjudicative proceeding. 2009

PART 3

FINANCES

79-2-301. Budget.

(1) The department shall prepare and submit to the governor, to be included in the budget to be submitted to the Legislature, a budget of the department's requirements for expenses in carrying out the provisions of law during the fiscal year next following the convening of the Legislature.

(2) The director of each division shall prepare, with the advice of the division's policy board, a budget of expenses for the next fiscal year, which shall be submitted to the executive director to aid in the preparation of the departmental budget. 2009

79-2-302. Fees.

(1) Unless otherwise provided by statute, the department may adopt a schedule of fees assessed for services provided by the department.

(2) A fee described in Subsection (1) shall:

(a) be reasonable and fair; and

(b) reflect the cost of services provided.

(3) The department shall submit a fee established under this section to the Legislature as part of the department's annual appropriations request.

(4) The department may not charge or collect a fee established under this section without approval of the Legislature. 2009

79-2-303. Species Protection Account.

(1) There is created within the General Fund a restricted account known as the Species Protection Account.

(2) The account shall consist of:

(a) revenue generated by the brine shrimp tax provided for in Title 59, Chapter 23, Brine Shrimp Royalty Act; and

(b) interest earned on monies in the account.

(3) Monies in the account may be appropriated by the Legislature to:

(a) develop and implement species status assessments and species protection measures;

(b) obtain biological opinions of proposed species protection measures;

(c) conduct studies, investigations, and research into the effects of proposed species protection measures;



GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

December 2, 2010

Joro Walker
Charles R. Dubuc
Western Resource Advocates
150 South 600 East, Suite 2A
Salt Lake City, UT 84102

Dear Ms. Walker and Mr. Dubuc,

This letter responds to the Petition for Consistency Review received by the Utah Division of Forestry, Fire, and State Lands ("Division") you filed on August 9, 2010 on behalf of *Friends of Great Salt Lake* and others ("*Friends et al.*").

Your petition seeks consistency review of the Division's decision memorialized in ROD 09-0406-200 00115 approving an exchange of leases and granting new leases for mineral extraction on the Great Salt Lake.

Pursuant to applicable rules, the Division reviewed your petition, found it to be complete, and then forwarded it to me, Executive Director of the Department of Natural Resources, Michael Styler.

As you are aware, Judge Trease at the Third District Court, Case No. 080902785, recently issued a Memorandum Decision and Ruling affirming the Division's decision dismissing a similar Petition for Consistency Review related to the Division's approval of mineral leasing of 23,088 acres at Clyman Bay.

The Court upheld my decision dismissing the Petition for Consistency Review on the Clyman Bay lease because the Petitioners were not considered "aggrieved parties."

Petitioners did not have authority to participate in the adjudicative proceeding. Petitioners are not "parties" as defined under the Utah Administrative Procedures Act (UAPA). Utah Code Ann. § 63G-4-103(f) provides that a "Party" means the agency or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the presiding officer to intervene in the proceeding, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding. (Memorandum Decision and Ruling, 4 (Sept. 10, 2010)).

Furthermore, the Court affirmed that the decision to grant the leases was not a planning proceeding, but an adjudicatory decision made under existing management plans.

The ROD proceedings concerned the lease application under the existing state management plans – the MLP, a resource plan, and the CMP, a comprehensive management plan. See Utah Admin. Code R652090-200, which explains that the Division must implement at least one type of management plan. The ROD was an adjudicatory and not planning decision....[P]ursuant to the relevant statute, the oversight and review the Petitioners seek must occur when the plans are initially implemented or they could have filed for Agency Action to amend the MLP. Therefore, under the relevant statutes, the Petitioners have no right to Consistency Review and the Respondents correctly denied Petitioners' Petition for Consistency Review.

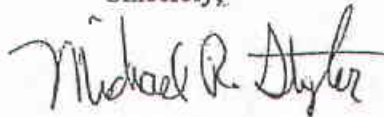
Similar to the earlier decision, the Petitioners who filed the current petition were not parties to the adjudicatory decision memorialized in ROD 09-0406-200 00115, and the decision was not a planning decision. Rather the decision was adjudicatory and made under the existing Mineral Leasing Plan and Comprehensive Management Plan. (*Id.* at 5).

Additionally, even if Petitioners were considered parties to the adjudicatory decision, the petition was untimely. Utah Code § 65A-1-4(6) specifies that "an aggrieved party to a final action by the director may appeal that action...within 20 days after the action." The final action of the Division occurred on August 4, 2009. The Petition for Consistency Review was not received until August 9, 2010, over a year after the final action.

For the foregoing reasons, and without reaching the merits of the petition, I decline to review the petition and order that the Petition for Consistency Review is hereby dismissed.

Pursuant to Utah Code § 63G-4-401(3)(a), a party may file a petition for judicial review of this final agency action in the appropriate district court within thirty (30) days after the date of this order.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael R. Styler". The signature is fluid and cursive, with the first name "Michael" being the most prominent part.

Michael R. Styler
Executive Director



State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Forestry, Fire and State Lands

RICHARD J. BUEHLER
State Forester/Division Director

October 25, 2010

CERTIFIED

Joro Walker
Charles R. Dubuc
Western Resource Advocates
150 South 600 East, Suite 2A
Salt Lake City, UT 84102

Dear Ms. Walker and Mr. Dubuc:

This letter is in response to the Request for Agency Action received by the Utah Division of Forestry, Fire, and State Lands ("Division") on August 19, 2010 filed on behalf of *Friends of Great Salt Lake* and others ("*Friends et al.*").

The request you filed seeks to challenge the Division's decision memorialized in Record Of Decision (ROD) 09-0406-200 00115 approving an exchange of leases and granting new leases for mineral extraction on the Great Salt Lake.

In the Request for Agency Action, *Friends et al.* asks the Division to (1) "[c]orrectly restate and apply the Public Trust doctrine...", (2) "[r]ectify the deficiencies in its public trust and management planning efforts...", and (3) "[m]eaningfully and adequately notify *Friends* and the public at large of any Division actions impacting sovereign lands..." See Request for Agency Action, 3 (Aug. 19, 2010).

Judge Trease at the Third District Court, Case No. 080902785, has issued a Memorandum Decision and Ruling affirming the Division's decision dismissing a similar Request for Agency Action challenging a mineral leasing decision for 23,088 acres at Clyman Bay because such a request is not authorized by rule or statute:

Pursuant to § 63G-4-201(3)(1), a person may file a request for agency action, "[w]here the law applicable to the agency permits persons other than the agency to initiate adjudicative proceedings." The Utah Admin. Code limits agency review to "applications for leases, permits, easements, sale of sovereign lands, exchange of sovereign lands, sale of forest products and any other disposition of resources under the authority of the agency or other matters where the law applicable to the agency permits parties to initiate adjudicative proceedings. Utah Admin. Code R652-8-200. See also R652-8-100. Petitioners' Request is not for any of the above, and the Division does not specifically authorize such an agency action in any other administrative rule. Memorandum Decision and Ruling, 7 (Sept. 10, 2010, Case No. 080902785).

The Judge also affirmed the Division's dismissal on the ground that filing a Request for Agency Action does not allow a non-party to intervene in ROD proceedings.



Furthermore, the filing of a Request for Agency Action does not confer on the Petitioners, the status of party or intervenor in the ROD proceedings. To find otherwise would render meaningless the provisions of [Utah Code] § 63G-4-203(g) which outlines the procedures for informal adjudicative proceedings and states that "intervention is prohibited, except that the agency may enact rules permitting intervention where a federal statute or rule requires that a state permit intervention."...The Respondents properly dismissed Petitioners' Request for Agency Action. *Id.*

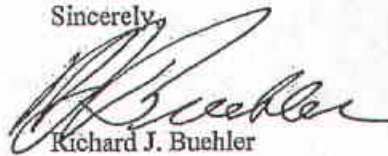
Because Petitioners' present Request for Agency Action challenging a similar mineral leasing decision is not authorized by rule, and because Petitioners cannot collaterally attack the ROD through a Request for Agency Action, the Division hereby dismisses the Request for Agency Action filed by *Friends of Great Salt Lake et al.* challenging ROD 09-0406-200 00115.

Parties having an interest in this action may file a petition for administrative review of the Division's action pursuant to R652-9-300 and 652-9-400. A petition must be in writing and shall contain:

1. The statute, rule, or policy with which the Division action is alleged to be inconsistent;
2. The nature of the inconsistency of the Division action with the statute, rule, or policy;
3. The action petitioner feels would be consistent under the circumstances with statute, rule, or policy, and;
4. The injury realized by the party that is specific to the party arising from the Division action. If the injury identified by the Petition is not peculiar to the petitioner as a result of the Division action, the Director will decline to undertake consistency review.

Any petition for consistency review must be received by the Division by 6:00 p.m. no later than 20 days from the date this letter was mailed.

Sincerely,



Richard J. Buehler
Director

cc: Fred Donaldson
Mike Johnson

2010 SEP 1 2 30 PM

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

FRIENDS OF GREAT SALT LAKE, et al.,

Petitioners,

vs.

UTAH DEPARTMENT OF NATURAL
RESOURCES, and agency of the State of
Utah, et al.,

Respondents.

GREAT SALT LAKE MINERAL
CORPORATION,

Intervenor/Plaintiff,

vs.

FRIENDS OF GREAT SALT LAKE, et al.,

Defendants.

MEMORANDUM DECISION AND
RULING

NKB

Case No. 080902785

Judge Vernice Trease

The above matter came before the court for decision on three motions for partial summary judgment regarding the Petitioners', Friends of Great Salt Lake, the Utah Waterfowl Association, the National Audubon Society, and others ("Petitioners"), appeal of a final agency action. Respondents are the Utah Department of Natural Resources ("DNR"); the Division of Forestry, Fire and State Lands (the "Division"); the Executive Director of DNR; the Executive Director of the Division; and others (collectively, "Respondents"). The Great Salt Lake Minerals Corporation ("Mineral Company") intervened in the action and filed a declaratory action against Petitioners. All three parties filed motions for summary judgments, which were stayed pending a decision from the Utah Supreme Court; an opinion was published March 30, 2010. *See Friends of Great Salt Lake v. Utah Dep't of Natural Res.*, 2010 UT 20, 230 P.3d 1014.

On June 7, 2010, oral argument on the motions for partial summary judgment was convened to allow Petitioners, Respondents, and Mineral Company an opportunity to present their arguments. The court has carefully considered the oral arguments presented by counsel and

thoroughly reviewed the parties' memoranda, exhibits, the relevant case law, and all applicable rules and statutory provisions. Now being fully advised, the court makes the following ruling granting Respondents' and Mineral Company's motions for partial summary judgment and denying Petitioners' motion for partial summary judgment.

PROCEDURAL HISTORY

Petitioners filed a Complaint and Petition for Review in this court on February 15, 2008. They seek a declaratory judgment requiring the Respondents to adjudicate the Petitions that the Respondents denied and dismissed in its July 2, 2007 Decision and Order.¹ In large measure, Petitioners had challenged the Division's issuance of a lease to the Mineral Company for mining extraction in the Great Salt Lake as a breach of the public trust doctrine and the Respondents denied and dismissed Petitioner's Petitions.

Petitioners concurrently filed an appeal of the Decision and Order with the Utah Supreme Court, as well as a Petition for Extraordinary Relief under rule 65B. *See* Utah R. Civ. P. 65B(a); *Friends of Great Salt Lake*, 2010 UT 20, PP6, 20. With the stipulation of the parties, the court continued arguments on the motions for partial summary judgment until March 30, 2010, when the Utah Supreme Court issued its opinion: *Id.* The Utah Supreme Court determined that it did not have jurisdiction because Petitioners appealed an informal agency proceeding. *Id.* at P20. They denied the 65B(a) petition for extraordinary relief because Petitioners had not exhausted its direct appeal in the district court. *Id.* at P23.

Respondents seek partial summary judgment affirming its agency action, which dismissed Petitioner's Petition for Consistency Review, Petition for Declaratory Order, and Request for Agency Action. The Mineral Company, to whom, on December 1, 2008, the court granted leave to intervene, likewise seeks partial summary judgment.² In large measure, Respondents' and Mineral Company's arguments coincide. On their Motion for Partial Summary Judgment, Petitioners seek a reversal of the Respondent's denial and dismissal of each of its Petitions.

¹ In its Second Amended Complaint, in its first four causes of action, Petitioners seek a declaration and/or order that the Division: (1) address its three Petitions on the merits, (2) reverse the denial and dismissal of the Petitions, (3) acted arbitrarily and capriciously contrary to the law; and (4) that the Division's proposed mineral expansion project will adversely impact public trust values. Petitioners initially filed a Motion for Summary Judgment, which they later corrected to a Motion for *Partial* Summary Judgment, stating that its final cause of action—for Judicial Review of the Division's denial of Petitioners' February 7, 2008 Request for Action Regarding Amendment of the MLP and CMP—exists regardless of the court's ruling on the Motions for Partial Summary Judgment.

² Respondents filed a Joinder in the Mineral Company's Motion for Partial Summary Judgment.

Thereafter, the Division sought bids on the proposed lease, and the Mineral Company submitted an application and a bid to lease 23,088 acres in Clyman Bay of the Great Salt Lake. (Ex. A, R 65; Ex. B, R 443, Declaration of Grierson). The Mineral Company was the only bidder. On July 2, 2007, the Division accepted the Mineral Company's application and issued a Record of Decision ("ROD"). (Ex. A, R 1-27; Declaration of Grierson). The Division concluded that the application complied with the MLP and the CMP. (Declaration of Grierson).

Petitioners subsequently filed three petitions, all of which challenged the ROD: (1) a Petition for Declaratory Order (2) a Petition for Consistency Review and (3) a Request for Agency Action (collectively, the "Petitions"). (Ex. B, R 162-242; Ex. C, R 243-322; Ex. E, R 437-456). On January 18, 2008, the Respondents issued a Final Agency Action, Decision and Orders ("Final Agency Action") dismissing the Petitions without a hearing on legal grounds. (Ex. E, R 437-456).

DISCUSSION

"A summary judgment movant must show both that there is no material issue of fact and that the movant is entitled to judgment as a matter of law." *Orvis v. Johnson*, 2008 UT 2, P10, 177 P.3d 600 (citing Utah R. Civ. P. 56(c)). The court relies on the undisputed administrative record and rules as a matter of law.

The primary issue in this matter is whether the Respondents, when they denied and dismissed the Petitions, deprived Petitioners their right to seek administrative adjudication of the ROD, or whether Petitioners are not authorized to raise their challenges because they are not parties to the informal adjudication process.

Request for Consistency Review

Petitioners submitted a Request for Consistency Review of the informal ROD proceedings. Petitioners contend they are parties to the ROD proceedings because it was a part of a site-specific planning process undertaken by the Division. Respondents and Mineral Company respond that, as a matter of law, the proceedings were not a site-specific planning process and the Petitioners are not "aggrieved parties" to the ROD process.

Petitioners did not have authority to participate in the adjudicative proceeding. Petitioners are not "parties" as defined under the Utah Administrative Procedures Act (UAPA). Utah Code Ann. § 63G-4-103(f) provides that a "'Party' means the agency or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the presiding officer to intervene in the proceeding, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding."³

³Utah Code Ann. 63(G)-4-103(I) defines 'Respondent' as "a person against whom an adjudicative proceeding is initiated, whether by an agency or any other person".

The court does not agree with Petitioners' contention that the ROD proceedings were site-specific planning process undertaken by the Division. Although the Division must "notif[y] and consult[] with interested parties including the general public [and] resources users, . . . on state land management plans," by giving "reasonable notice and comment periods," and "respond[ing] to all commenting parties and giv[ing] the rationale for the acceptance or nonacceptance of the comments," the Division is not required to do the same for the ROD proceedings, which are not state management planning processes. Utah Code Ann. § 65A-2-4(1). Had the ROD process been a resource management plan such as the MLP, a comprehensive management plan such as the CMP, or a site-specific plan, Petitioners would have had a right to participate. In fact, Petitioners had a right to challenge the MLP and the CMP when they were implemented, but they did not have the same right to challenge the ROD proceedings.

The ROD proceedings concerned the lease application *under* the existing state management plans—the MLP, a resource plan, and the CMP, a comprehensive management plan. See Utah Admin. Code R652-90-200, which explains that the Division must implement at least one type of management plan.⁴ The ROD was an adjudicatory and not planning decision. The court agrees, as pointed out by one counsel during oral argument, that oversight and review is a good thing. However, pursuant to the relevant statutes, the oversight and review the Petitioners seek must occur when the plans are initially implemented or they could have filed for Agency Action to amend the MLP. **Therefore, under the relevant statutes, the Petitioners have no right to a Consistency Review and the Respondents correctly denied Petitioners' Petition for Consistency Review.**

Petition for Declaratory Order

Petitioners petitioned for a declaratory order regarding "whether the Division had

⁴On appeal of this matter, the Utah Supreme Court, stated that the "Mineral Company's nomination of the Great Salt Lake sovereign land triggered the Division's obligation to conduct site-specific planning under Utah Administrative Code rule 652-90-300." *Friends of Great Salt Lake v. Utah Dep't of Natural Res.*, 2010 UT 20, P3, 230 P.3d 1014. Petitioners argue that this statement was critical to the court's determination that the adjudicative proceedings were informal. The Division argues that the statement is dicta and furthermore, that the issue was not briefed. Regardless, the Division argues, the issue in the instant matter is not whether it should have conducted site-specific planning but rather whether Petitioners have the authority to raise its Petitions before the court. The court agrees with the Division that the factual statement in *Friends* that the nomination triggered site-specific planning was not critical to the holding that there was an informal adjudicative proceeding. See e.g. *State v. Daniels*, 2002 UT 2, P35, 40 P.3d 611 (add explanation). Furthermore, the *Friends* court did not refer to the site-specific planning in its analysis. It is this court's opinion that under the relevant statute the Division was required to initiate site-specific planning only in the absence of the existence of a resource management plan or a comprehensive management plan. See Utah Admin. Code R652-90-200. See also § 65A-10-8(1) (stating that the Division must maintain a comprehensive plan for the Great Salt Lake).

complied with its statutory and regulatory Public Trust and planning obligations relative to Mineral Company's 33,000 acre expansion proposal. Specifically, Petitioners asked the Division to apply Utah Const. Art. XX, § 1, Utah Code Ann. § 65A-10-1(1) and the Division's planning regulations to the Division's approval of the Mineral Company's expansion proposal." See Petitioners' Memo in Support, p. 40. The Division is the management authority for sovereign lands, and may exchange, sell, or lease sovereign lands but only in the quantities and for the purposes as serve the public interest and do not interfere with the public trust." Utah Code Ann. § 65A-10-1(1).

Petitioners rely on the UAPA, which provides that "[a]ny person may file a request for agency action, requesting that the agency issue a declaratory order determining the applicability of a statute, rule, or order within the primary jurisdiction of the agency to specified circumstances." Utah Code Ann. § 63G-4-503(1).

However, Utah Code Ann. § 63G-4-503 has limitations. Pursuant to the statute, the Division "may issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party, only if that person consents in writing to the determination of the matter by a declaratory proceeding." *Id.* - 503(3)(b). Additionally, Utah Administrative Rule 652-7-500 mandates that a petition for declaratory action "shall be denied if . . . the specified facts, issue situation, or circumstance is based on disputed facts". Utah Admin. Code R 652-7-500(1).

The court is not persuaded as contended by Petitioners that the Mineral Company is not a necessary party. It is undisputed that the Petition for Declaratory Order was submitted after the Division had granted the Mineral Company's lease application. Mineral Company is a necessary party and never gave written consent to determination of the matter by a declaratory proceeding. A declaratory order would substantially prejudice the Mineral Company's rights. The Division had already granted the Mineral Company the lease application, and the Mineral Company submitted a \$50,000 bonus bid. Furthermore, the Petitioners were also challenging the status of existing leases that had been held by in Bear River Bay for twenty or more years. A declaratory order on these existing leases is prejudicial to the Mineral Company.

The Petition was based on numerous disputed facts. Although the record of what transpired during the process is what it is, the Petition submitted does challenged numerous facts, findings and conclusions of the Division. (Ex. D, R 323-402).

Utah Administrative Rule 652-7-500(1)(c) states that a petition shall be denied if "the petition requests a ruling on an order other than an executed contract". At the time the Petition for Declaratory Order was filed, the Division had granted the Mineral Company's lease application but had not yet executed a mineral lease with the Mineral Company. The Petition therefore, did not challenge a ruling on an executed contract. Accordingly, the Respondents properly denied Petitioners' Petition for Agency Declaratory Order.

Request for Agency Action

Petitioners' request for agency action similarly questions whether "the Division has adequately fulfilled its Public Trust, management and planning obligations relative to its approval of the Mining Company's proposed 33,000 acre expansion." (Petitioners' Memorandum in Support of Motion for Summary Judgment at page 36). Petitioners contend their authority to request agency action is found under §63-4-201(1). Petitioners contend the Act permits the "commencement of adjudicative proceedings or agency action by either an agency or any 'person[] other than the agency.'" *Id.* Petitioners further argue that any person may request agency action under Utah Admin. Code 652-8-200(1).

Respondents and Mineral Company also rely on § 63G-4-102, and contend this is a procedural statute rather than one granting substantive rights. They argue that Petitioners do not have a substantive right to request agency action and that the mere filing of a request does not create this legal right.

Pursuant to §63-4-201(3)(a), a person may file a request for agency action, "[w]here the law applicable to the agency permits persons other than the agency to initiate adjudicative proceedings." The Utah Admin. Code limits agency review to "applications for leases, permits, easements, sale of sovereign lands, exchange of sovereign lands, sale of forest products and any other disposition of resources under the authority of the agency or other matter where the law applicable to the agency permits parties to initiate adjudicative proceedings." Utah. Admin. Code R652-8-200. *See also* R652-8-100.

Petitioners' Request is not for any of the above, and the Division does not specifically authorize such an agency action in any other administrative rule. Furthermore, the filing of a Request for Agency Action does not confer on the Petitioners, the status of party or intervener in the ROD proceedings. To find otherwise would render meaningless the provisions of § 63G-4-203(g) which outlines the procedures for informal adjudicative proceedings and states that "[i]ntervention is prohibited, except that the agency may enact rules permitting intervention where a federal statute or rule requires that a state permit intervention." The appellate courts have upheld the interests of the Division in informal adjudicative proceedings to go forward with decision making in this fashion. In *National Parks & Conservation Ass'n v. Board of State Lands*, 869 P.2d 909, 914 the court observe that if parties with private interests were allowed to intervene in transactions such as leases and sales of state land, the delays associated with these administrative proceedings could paralyze "government programs dealing with the acquisition and disposition of property." The Respondents properly dismissed Petitioners' Request for Agency Action.

RULING

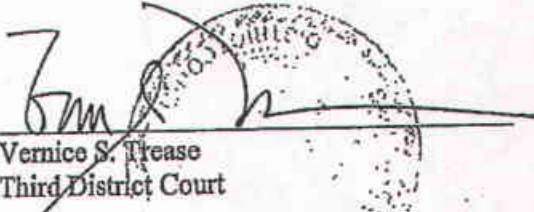
Petitioners' Motion for Partial Summary Judgment is hereby denied.

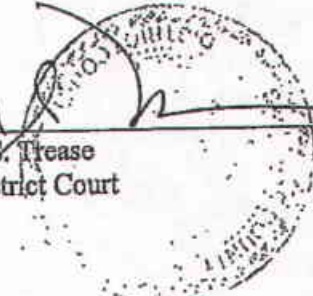
Respondents' Motion for Partial Summary Judgment is hereby granted.

Mineral Company's Motion for Partial Summary Judgment is hereby granted.

Counsel for Respondents is designated to prepared an appropriate order consistent with the court's ruling.

Dated this 10th day of September, 2010.


Vernice S. Trease
Third District Court



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 080902785 by the method and on the date specified.

MAIL: STEPHEN G SCHWENDIMAN 1594 W NORTH TEMPLE STE 300 SALT LAKE CITY, UT 84116

MAIL: STEVEN J CHRISTIANSEN 185 S STATE ST STE 800 POB 11019 SALT LAKE CITY UT 84147

MAIL: CHARLES R DUBUC 150 S 600 E STE 2A SALT LAKE CITY UT 84102

MAIL: CHEYLYNN HAYMAN 185 S STATE STREET STE 800 SALT LAKE CITY UT 84111

MAIL: NORMAN K JOHNSON NATURAL RESOURCES DIVISION 1594 W NORTH TEMPLE STE 300 SALT LAKE CITY UT 84116

MAIL: JORO WALKER 150 SOUTH 600 EAST STE 2A SALT LAKE CITY UT 84102

Date: 09-13-10


Deputy Court Clerk